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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
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Monday, June 7, 2004

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206–AK48

Federal Employees Health Benefits Program: Modification of Two-Option Limitation for Health Benefits Plans and Continuation of Coverage for Annuitants Whose Plan Terminates an Option

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is modifying the prohibition against Federal Employees Health Benefits (FEHB) plans offering more than 2 options, to allow FEHB plans to offer 2 options plus a high deductible plan. OPM is also modifying what happens when an annuitant's health plan terminates an option, and the annuitant doesn't make a health benefits change.

DATES: Effective June 7, 2004. OPM must receive comments by August 6, 2004.

ADDRESSES: Send written comments to Abby L. Block, Deputy Associate Director for Employee and Family Support Policy, Strategic Human Resources Policy Division, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415; or deliver to OPM, Room 3425, 1900 E Street NW., Washington, DC; or FAX to (202) 606–0633.

FOR FURTHER INFORMATION CONTACT: Karen Leibach, (202) 606–0004.

SUPPLEMENTARY INFORMATION: Pub. L. 108–173, Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (the Medicare Modernization Act, 117 Stat. 2006), enacted December 8, 2003, contains a provision (section 1201) authorizing health savings accounts (HSAs) for individuals who are not eligible for Medicare and who are in a high deductible health benefits plan. A high deductible plan, as defined in U.S. Code 223(c)(2)(A) of the title 26, is a plan with a deductible of at least $1,000 for individual coverage or $2,000 for family coverage. Some FEHB plans may be interested in offering eligible enrollees such a high deductible plan product with an HSA or a health reimbursement account (HRA) if the enrollee is not eligible for an HSA. An HRA is an employer-provided accident or health plan, which reimburses employees for certain medical care expenses incurred by the employee, the employee's spouse, and dependents. However, many plans participating in the FEHB Program already offer 2 options, and current regulations do not permit FEHB plans to offer more than 2 options. Therefore, OPM is revising its regulations to allow plans participating in the FEHB Program to offer 2 options plus a high deductible plan.

OPM is also changing slightly what happens when an annuitant's plan terminates an option, and the annuitant does not make a health benefits change. Currently, our regulations state that if a plan has 2 options, and one of the options is discontinued, an annuitant who does not change health plans is considered to be enrolled in the plan's remaining option. However, with the introduction of new products, such as consumer-driven plans and plans with high deductibles, it may not be in an annuitant's best interests to be "deemed" into a plan's remaining option. We are revising our regulation to state that an annuitant who doesn't make a health benefits change when his/her plan terminates an option will be moved into the plan's remaining option if that option reasonably approximates the terminating option. If the remaining option does not reasonably approximate the terminating option, such as the remaining option is a high deductible health plan or a consumer driven plan, and the annuitant doesn't make a health benefits change, he/she will be moved into the standard option of the Blue Cross and Blue Shield Service Benefit Plan.

Waiver of Notice of Proposed Rulemaking

In accordance with § 553(b)(3)(B) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking and the 30-day delay in effectiveness for this rule. The HSA provision of Pub. L. 108–173 became effective January 1, 2004.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation only affects health benefits plans and annuitants participating in the Federal Employees Health Benefits Program.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professionals, Hostages, Iraq, Kuwait, Lebanon, Reporting and record keeping requirements, Retirement.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

■ Accordingly, OPM is amending 5 CFR part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

■ 1. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.803 also issued under 50 U.S.C. 403(p), 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; § 890.102 also issued under sections 11202(f), 11232(e), and 11246(b) and (c) of Pub. L. 105–33, 111 Stat. 251; and section 721 of Pub. L. 105–261, 112 Stat. 2061 unless otherwise noted.

■ 2. Revise paragraph (b)(3) of § 890.201 to read as follows:

§ 890.201 Minimum standards for health benefits plans.

* * * * *

(b) * * *

(3) Have more than two options and a high deductible health plan (26 U.S.C. 223(c)(2)(A).

■ 3. Revise paragraph (1)(4)(iii) of § 890.306 to read as follows:

§ 890.306 When can annuitants or survivor annuitants change enrollment or reenroll and what are the effective dates?

* * * * *

(1) * * *

(4) * * *

(iii) If a plan has more than one option, and one or more options of the plan is discontinued, an annuitant who does not change the enrollment is considered to be enrolled in a remaining option of the plan. However, if OPM determines that there is no remaining option that reasonably approximates the terminating option, the annuitant will be considered to be enrolled in the standard option of the Blue Cross and Blue Shield Service Benefit Plan.

* * * * *

[FR Doc. 04–12799 Filed 6–2–04; 3:28 pm]

BILLING CODE 6325–39–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 04–025–1]

Gypsy Moth Generally Infested Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the gypsy moth regulations by adding one county in Ohio and seven counties in Wisconsin to the list of generally infested areas based on the detection of infestations of gypsy moth in those counties. As a result of this action, the interstate movement of regulated articles from those areas will be restricted. This action is necessary to prevent the artificial spread of the gypsy moth to noninfested States.

DATES: This interim rule is effective June 7, 2004. We will consider all comments that we receive on or before August 6, 2004.

ADDRESSES: You may submit comments by any of the following methods:

- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. 04–025–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–025–1.
- *E-mail:* Address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 04–025–1" on the subject line.
- *Agency Web Site:* Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to submit an e-mail comment through the APHIS Web site.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Weyman Fussell, Program Manager, Pest Detection and Management Programs, PPQ , APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–5705.

SUPPLEMENTARY INFORMATION:

Background

The gypsy moth, *Lymantria dispar* (Linnaeus), is a destructive pest of forest and shade trees. The gypsy moth regulations (contained in 7 CFR 301.45 through 301.45–12 and referred to below as the regulations) restrict the interstate movement of regulated articles from generally infested areas to prevent the artificial spread of the gypsy moth.

In accordance with § 301.45–2 of the regulations, generally infested areas are, with certain exceptions, those States or portions of States in which a gypsy moth general infestation has been found by an inspector, or each portion of a State that the Administrator deems necessary to regulate because of its proximity to infestation or its inseparability for quarantine enforcement purposes from infested localities. Less than an entire State will be designated as a generally infested area only if: (1) The State has adopted and is enforcing a quarantine or regulation that imposes restrictions on the intrastate movement of regulated articles that are substantially the same as those that are imposed with respect to the interstate movement of such articles; and (2) the designation of less than the entire State as a generally infested area will be adequate to prevent the artificial interstate spread of infestations of the gypsy moth.

Designation of Areas as Generally Infested Areas

Section 301.45–3 of the regulations lists generally infested areas. In this rule, we are amending § 301.45–3(a) by adding one county in Ohio and seven counties in Wisconsin to the list of generally infested areas. As a result of this rule, the interstate movement of regulated articles from these areas will be restricted.

We are taking this action because, in cooperation with the State of Ohio and the State of Wisconsin, the United States Department of Agriculture conducted surveys that detected multiple life stages of the gypsy moth in Hocking County, OH, and in Adams, Dane, Lincoln, Marathon, Marquette, Oneida, and Vilas Counties, WI. Based on these surveys, we determined that reproducing populations exist at significant levels in these areas. Eradication of these populations is not considered feasible because these areas are immediately adjacent to areas currently recognized as generally infested and are, therefore, subject to reinfestation.

Emergency Action

This rulemaking is necessary on an emergency basis because of the possibility that the gypsy moth could be artificially spread to noninfested areas of the United States, where it could cause economic losses due to the defoliation of susceptible forest and shade trees. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (*see* **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.45–3, paragraph (a), the entries for Ohio and Wisconsin are amended by adding new counties in alphabetical order to read as follows:

§ 301.45–3 Generally infested areas.

(a) * * *

* * * * *

Ohio

* * * * *

Hocking County. The entire county.

* * * * *

Wisconsin

Adams County. The entire county.

* * * * *

Dane County. The entire county.

* * * * *

Lincoln County. The entire county.

* * * * *

Marathon County. The entire county.

* * * * *

Marquette County. The entire county.

* * * * *

Oneida County. The entire county.

* * * * *

Vilas County. The entire county.

* * * * *

Done in Washington, DC, this 1st day of June 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–12757 Filed 6–4–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 04–036–1]

Pine Shoot Beetle; Additions to Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the pine shoot beetle regulations by adding Decatur, Jennings, and Ripley Counties, IN, and Franklin County, NY, to the list of quarantined areas. This action is necessary to prevent the spread of pine shoot beetle, a pest of pine products, into noninfested areas of the United States.

DATES: This interim rule is effective June 7, 2004. We will consider all comments that we receive on or before August 6, 2004.

ADDRESSES: You may submit comments by any of the following methods:

- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. 04–036–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–036–1.
- *E-mail:* Address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 04–036–1" on the subject line.
- *Agency Web Site:* Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to submit an e-mail comment through the APHIS Web site.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Mr. Weyman Fussell, Program Manager, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1231; (301) 734–5705.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 301.50 through 301.50–10 (referred to below as the regulations) restrict the interstate movement of certain regulated articles from quarantined areas in order to prevent the spread of pine shoot beetle (PSB) into noninfested areas of the United States.

PSB is a pest of pine trees that can cause damage in weak and dying trees, where reproduction and immature stages of PSB occur. During "shoot

feeding," young beetles tunnel into the center of pine shoots (usually of the current year's growth), causing stunted and distorted growth in host trees. PSB is also a vector of several diseases of pine trees. Factors that may result in the establishment of PSB populations far from the location of the original host tree include: (1) Adults can fly at least 1 kilometer, and (2) infested trees and pine products are often transported long distances. This pest damages urban ornamental trees and can cause economic losses to the timber, Christmas tree, and nursery industries.

PSB hosts include all pine species. The beetle has been found in a variety of pine species (*Pinus* spp.) in the United States. Scotch pine (*P. sylvestris*) is the preferred host of PSB. The Animal and Plant Health Inspection Service (APHIS) has determined, based on scientific data from European countries, that fir (*Abies* spp.), larch (*Larax* spp.), and spruce (*Picea* spp.) are not hosts of PSB.

Surveys conducted by State and Federal inspectors have revealed that Decatur, Jennings, and Ripley Counties, IN, and Franklin County, NY, are infested with PSB. Copies of the surveys may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

The regulations in § 301.50–3 provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which PSB has been found by an inspector, in which the Administrator has reason to believe PSB is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which PSB has been found.

In accordance with these criteria, we are designating Decatur, Jennings, and Ripley Counties, IN, and Franklin County, NY, as quarantined areas, and we are adding them to the list of quarantined areas in § 301.50–3(c).

Entities affected by this interim rule may include nursery stock growers, Christmas tree farms, logging operations, and others who sell, process, or move regulated articles. As a result of this interim rule, any regulated articles to be moved interstate from a quarantined area must first be inspected and/or treated in order to qualify for a certificate or limited permit authorizing the movement.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent PSB from spreading to noninfested areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register.**

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register.** The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

We are amending the PSB regulations by adding Decatur, Jennings, and Ripley Counties, IN, and Franklin County, NY, to the list of quarantined areas. This action is necessary to prevent the spread of PSB into noninfested areas of the United States.

This change will affect entities in the four newly regulated counties in Indiana and New York that are engaged in moving regulated articles interstate from the regulated area. Christmas tree farms, nurseries and greenhouses, logging operations, and other entities engaged in the movement of pine trees or pine products located in the newly designated regulated areas will be required to inspect and/or treat regulated articles in order to obtain a certificate or limited permit before moving them interstate.

APHIS has identified 86 entities that sell, process, or move forest products in the newly regulated area that are likely to be affected by this action. Of these entities, 68 are nurseries and 18 are cut Christmas tree farms. Specifically, in Franklin County, NY, APHIS has identified 24 nurseries and greenhouses and 6 cut Christmas tree farms that sell, process, or move forest products. In the 3 Indiana counties, the rule is likely to impact 44 nurseries and greenhouses and 12 cut Christmas tree farms.

According to the Agricultural Extension Offices in Franklin County, NY, and Decatur, Jennings, and Ripley Counties, IN, all of the cut Christmas tree farms within the newly regulated counties sold cut pine trees and pine tree products that remained solely within the regulated areas. In addition, nurseries in New York and Indiana specialize in the production of deciduous landscape products and not in the production of rooted pine Christmas trees and pine nursery stock. For these reasons, these entities should not be significantly affected by this rule.

Impact on Small Entities

The Regulatory Flexibility Act requires that agencies consider the economic effects of their rules on small entities and to use flexibility to provide regulatory relief when regulations create economic disparities between different sized entities. According to the Small Business Administration's (SBA's) Office of Advocacy, regulations create disparities based on size when they have a significant economic impact on a substantial number of small entities.

According to SBA size standards, nursery stock growers are considered small entities when they have annual sales of $750,000 or less, and Christmas tree growers are considered small entities when they have annual sales of $5 million or less. According to the 1997 Agricultural Census, almost all of the previously mentioned 68 nurseries and greenhouses and the 18 cut Christmas tree farms within the newly regulated areas meet the SBA's criteria and are considered small entities.

As noted previously, those nurseries and greenhouses within the newly regulated area specialize in production of deciduous landscape products, not the production of regulated articles such as rooted pine trees and pine nursery stock. Further, the Christmas trees and pine products from cut Christmas tree farms remain exclusively within the regulated areas. For these reasons, the impact of this rule on regulated entities as a whole is not expected to be significant.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings

before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.50–3, paragraph (c), the entries for Indiana and New York are amended by adding new counties in alphabetical order to read as follows:

§ 301.50–3 Quarantined areas.

* * * * *

(c) * * *

Indiana

* * * * *

Decatur County. The entire county.

* * * * *

Jennings County. The entire county.

* * * * *

Ripley County. The entire county.

* * * * *

New York

* * * * *

Franklin County. The entire county.

* * * * *

Done in Washington, DC, this 1st day of June 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–12758 Filed 6–4–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 996

[Docket No. FV03–996–2 FIR]

Minimum Quality and Handling Standards for Domestic and Imported Peanuts Marketed in the United States

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting as a final rule, without change, an interim final rule that changed peanut quality and handling standards for domestic and imported peanuts marketed in the United States. These provisions are intended to maximize handling efficiency and to provide peanut producers, handlers, and importers with flexibility in meeting current and new market demands, while maintaining peanut quality and wholesomeness for consumers.

EFFECTIVE DATE: June 8, 2004.

FOR FURTHER INFORMATION CONTACT: Dawana Clark or Kenneth G. Johnson, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 4700 River Road, Room 2A04, Unit 155, Riverdale, Maryland 20737; telephone (301) 734–5243, Fax: (301) 734–5275 or George J. Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; telephone (202) 720–2491, Fax: (202) 720–8938; or E-mail: *dawana.clark@usda.gov, kenneth.johnson@usda.gov* or *george.kelhart@usda.gov.*

Small businesses may request information on complying with this rule by contacting Jay Guerber, at the same DC address as above, or E-mail: *jay.guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under section 1308 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171), 7 U.S.C. 7958, hereinafter referred to as the "Act."

This rule has been determined to be not significant for purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

There are no administrative procedures, which must be exhausted prior to any judicial challenge to the provisions of this rule.

Background

This rule is based on recommendations of the Peanut Standards Board (Board) and comments received from its members and other industry sources. The standards and the Board were established by the Department of Agriculture (USDA), pursuant to section 1308 of the Farm Security and Rural Investment Act of 2002. This rule continues the following: Screen sizes specified in the outgoing quality standards to allow smaller peanut kernels of all varieties to be used in edible markets; provisions in the text of the standards specifying that financially interested persons may appeal quality inspection results and that "holders of the title" to any lot of peanuts may appeal aflatoxin test results; provisions allowing peanut lots which meet fall through, minimum damage and minor defects standards prior to blanching, but fail for some other reason, to be exempt from fall through, minimum damage and minor defects standards upon re-inspection after blanching; and the increase to 10 percent in the quantity of sound whole kernels that may be contained in a lot of splits for specified peanut varieties.

Section 1308 of the Act requires that USDA take several actions with regard to peanuts marketed in the United States: Ensure mandatory inspection on all peanuts marketed in the United States; establish the Board comprised of industry representatives to advise USDA; and develop peanut quality and handling standards; and to modify those quality and handling standards when needed. An interim final rule was published in the **Federal Register** (67 FR 57129) on September 9, 2002, terminating the previous peanut programs and establishing standards in Part 996 to ensure the continued inspection of 2002 crop year peanuts and subsequent crop year peanuts, 2001 crop year peanuts not yet inspected, and 2001 crop year failing peanuts that had not yet met disposition standards. The initial Board was selected and announced on December 5, 2002. A final rule finalizing the interim final rule was published in the **Federal Register** (68 FR 1145) on January 9, 2003, to continue requiring all domestic and imported peanuts marketed in the United States to be handled consistent with the handling standards and

officially inspected against the quality standards of the new program. The provisions of this new program continue in force and effect until modified, suspended, or terminated.

Pursuant to the Act, USDA consulted Board members in the review of the handling and quality standards for the 2003 and subsequent crop years. USDA conducted a meeting with Board members on April 30, 2003. The changes were raised and supported by Board members. In addition to the meeting, USDA received written comments from Board members and others on recommended changes to the peanut handling and quality standards.

This rulemaking action continues unchanged: (1) Screen sizes specified in the outgoing quality standards to allow smaller peanut kernels of all varieties to enter edible channels; (2) provisions in the text of the standards specifying that financially interested persons may appeal quality inspection results and that "holders of the title" to any lot of peanuts may appeal aflatoxin test results; (3) provisions allowing peanut lots which meet fall through, minimum damage and minor defects standards, but fail for other reasons, prior to blanching, to be exempt from fall through, minimum damage and minor defects standards upon re-inspection after blanching; and (4) the increase to 10 percent of sound whole kernels that may be contained in lots of splits for specified peanut varieties. These provisions are intended to maximize handling efficiency and to provide producers, handlers, and importers with flexibility to meet current and new market demands, while maintaining peanut quality and wholesomeness for consumers.

The quality and handling standards are intended to assure that satisfactory quality and wholesome peanuts are used in domestic markets. All peanuts intended for human consumption must be officially inspected and graded by the Federal or Federal-State Inspection Service and undergo chemical testing by a USDA laboratory or a private laboratory approved by USDA. The maximum allowable presence of aflatoxin is 15 parts per billion (ppb), the same standard as required under the three previous peanut programs. This tolerance has been in effect for more than 15 years and was in effect at the time the previous peanut programs were terminated. Once certified as meeting outgoing quality standards, peanuts may not be commingled with any other peanuts that have failed outgoing quality standards or any residual peanuts from reconditioning operations.

The interim final rule implementing these changes was effective August 8, 2003 (68 FR 46919; August 7, 2003). A correction to a table specifying minimum quality standards in that rule was published September 11, 2003 (68 FR 53490).

Small Kernel Usage

Prior to establishing the quality standards that were applied during the 2002–03 crop year, a few peanut handler members of the Board suggested changing the shape and size of the holes in screens used to sort out small kernels. The changes discussed would have increased the number of smaller kernels that rode the screens and that could have entered edible channels.

The shape of the opening, slotted vs. round, is a significant factor in the number of smaller kernels that fall through or ride the screens. Slotted screens resemble the shape of peanuts and allow kernels to fall through as they move down the screen during the sorting process. Kernels fall through round openings only when striking the opening on end or "standing up" as they move down the screen. When more kernels ride the screen, more are available for edible channels.

Proponents of smaller kernel use claimed that end product manufacturers now have markets for smaller, whole kernels. They also claimed that modern, electronic color sorting technologies can sort out smaller kernels that are moldy or defective. Opponents, including some handlers and grower representatives, claimed that the benefits of increased use of small kernels were not worth the increased risk of aflatoxin contamination. Based on studies conducted by the Agricultural Research Service (ARS) going back to at least 1979, the industry was aware that there is a higher incidence of aflatoxin contamination in smaller peanut kernels.

Most Board members agreed that new research was needed on small kernel sizes and aflatoxin contamination before any change was made. USDA decided not to change screen sizes for the 2002–03 crop year and asked ARS to conduct another analysis of the incidence of aflatoxin in small peanut kernels. ARS peanut size and aflatoxin studies using 2002 crop Segregation 3 farmers' stock runner type peanuts from the Southeast (the peanuts and region most likely to have aflatoxin contamination) measured the contamination of kernels that rode a 16/64 inch slotted screen and those that rode a 17/64 inch round screen. The completed results, received by Fruit and Vegetable Programs on January 21, 2003, indicated that there was a small, but not significant, increase of aflatoxin associated with the smaller peanut kernel size.

Past research has demonstrated that three farmers stock grade components are associated with aflatoxin. These are damage, loose-shelled kernels, and small or other kernels, and are often called the aflatoxin risk components in farmers' stock peanuts. Very little aflatoxin is associated with high quality farmers stock peanuts associated with the farmers stock grade referred to as sound mature kernels and sound splits. Studies conducted by sampling 120 contaminated farmers stock lots, published in 1998, showed that these three risk components accounted for 93.1 percent of the total aflatoxin in a farmers stock lot, but only 18.4 percent of the lot kernel mass. Aflatoxin in sound mature kernels and sound splits, small and other kernels, loose shelled kernels, and damaged kernels represented 6.9, 7.9, 33.3, and 51.9 percent, respectively, of the total aflatoxin. The small and other kernels had the lowest risk of the three risk components. The findings of research performed in previous years were similar.

ARS believes that the results of the past studies are consistent with the current studies presented to the Board in April 2003. The peanuts that rode the 17/64 inch round screen were a mix of sizes from small to large (not only small kernels as in the past studies). The mix of sizes was used to better duplicate sheller milling lines and processing practices. The aflatoxin impact was minimal because small and other kernels have the lowest aflatoxin risk of the three risk components and the small kernels composed a small percentage of the different sizes riding the 17/64 inch round screen. The higher the percentage of small kernels riding a 17/64 inch round screen, the greater the aflatoxin impact that small kernels will have on the lot in question. The percentage of small kernels that fell through the 16/64 inch slotted screen and rode the 17/64 inch round screen varied greatly from lot to lot in the studies presented to the Board. They averaged about 7 and 21 percent in the current study, respectively. In the final analysis, the aflatoxin impact of the smaller kernels was not significant according to ARS.

The Board discussed the peanut size and aflatoxin study at its April 30, 2003, meeting, and recommended relaxation of quality standards to allow smaller peanut kernels to be used for human consumption because the increase in aflatoxin in small kernels was not determined to be significant. All Board members agreed that quality and

wholesomeness are paramount for producers, handlers, and importers, but the industry believes it can continue to provide buyers with high quality and wholesome peanuts with changed screen sizes.

Compliance officers report that out of approximately 70 shelling plants, a total of 60 have electronic sorting technology to sort out defective small kernels and further improve peanut quality and wholesomeness. The 10 plants without electronic sorting technology only shell seed peanuts, which are used for planting and not for shipment to the edible market. Based on more recent information, these numbers have been updated from those in the interim final rule.

As shown in the table in § 996.31(a) Minimum Quality Standards: Peanuts for Human Consumption—Whole Kernels and Splits: Maximum Limitations, this action continues in effect the change the screen size for Runner peanuts from a 16/64 inch by 3/4 inch slotted to a 17/64 inch round opening. These were the sizes and peanut variety used in the study presented to the Board.

Because Virginia, Spanish, and Valencia varieties do not routinely experience high aflatoxin content, smaller kernels of those varieties also are not expected to have significantly increased aflatoxin contamination. Therefore, for Virginia variety peanuts, the screen size continues to be a 17/64 inch round opening (previously the opening was 15/64 inch by 1 inch slotted). For the Spanish and Valencia varieties of peanuts, the change from a 15/64 inch by 3/4 inch slotted opening to a 16/64 inch round opening also is continued.

Corresponding changes are continued under the "Lots of splits" category for "Sound whole kernels". For Runner variety split lots, the screen opening was changed from a 15/64 inch by 1 inch slotted opening to a 17/64 inch round opening. For Virginia variety split lots, the 14/64 inch by 1 inch slotted opening was changed to a 17/64 inch round opening. For the Spanish and Valencia varieties, the screen opening was changed from a 13/64 inch by 3/4 inch slotted opening to a 16/64 inch round opening.

Previously, the table included three columns for fall through. The first two columns included a maximum 3 percent tolerance for "Sound Split and Broken Kernels" and "Sound Whole Kernels", and the third column included a total tolerance of 4 percent for these categories of peanuts, except all three columns allowed 6 percent for "No. 2 Virginia". A comment received from a handler association subsequent to the Board meeting suggested combining the three columns into one column and establishing a total tolerance of 6 percent for sound split, broken, and small kernels allowed in any lot to bring the tolerances into conformity with the U.S. Grade Standards for the various types of peanuts grown and marketed in the United States. These recommendations were adopted by USDA and implemented in the interim final rule.

This final rule continues the relaxation in the utilization of small peanut kernels for edible consumption by changing the screens from slotted to round holes for sound whole kernels and splits as noted. This relaxation is expected to increase market share for U.S. peanuts by enabling handlers to sell smaller peanuts to buyers who purchase less expensive peanuts from other origins for manufacturing into peanut butter and paste, or similar products.

The screen changes are being implemented at shelling facilities with minimal or no additional cost to the shellers—either large or small. The screens with smaller openings were already being used for split lots and no additional investment for screens should be necessary. Any adjustments to the packing line as far as screens are concerned should be easily implemented.

According to Federal-State Inspection Service, all plants in Georgia shelling Runners and Spanish and Valencia varieties were already using 17/64 round screens on the Runners and 16/64 screens on the Spanish and Valencia varieties. The Inspection Service has a supply of screens for smaller peanut kernels to cover the five new shelling plants which were expected to begin operations by January 2004. In addition, the Inspection Service will provide screens for peanut shellers that need them at a cost per screen of $55.00, plus shipping.

Appeal Procedures

This action also continues in effect in § 996.40(c) provisions specifying that the "holder of the title" to any lot of peanuts may request an appeal inspection if it is believed that the original aflatoxin analysis is in error. Appeals for aflatoxin are handled following procedures specified in the Inspection Service's Instructions for Milled Peanuts. The aflatoxin sample would be drawn by Federal or Federal-State Inspection Service inspectors and the appeal analysis would be performed, and the aflatoxin certificate issued, by USDA or USDA-approved laboratories.

This action also continues to specify in this section that any financially interested person may request an appeal inspection if it is believed that the original quality inspection was in error. These appeals also would continue to be handled following procedures specified in the Inspection Service's Instructions for Milled Peanuts. Federal or Federal-State Inspection Service inspectors would sample and inspect the peanuts following procedures in the milled peanut instructions.

All costs involved in conducting appeal inspections are for the account of the "holder of the title" or the financially interested person requesting the appeal. Under the appeal process, appeals may be requested verbally. A written request is not necessary.

Re-Inspection of Blanched Lots

Peanut lots which meet quality (grade) standards, including fall through, damage and minor defects, but which fail on aflatoxin may be blanched to remove the contaminated kernels. Under the previous standards, blanched lots had to be re-inspected for damage and minor defects. In some cases, a peanut lot will pass aflatoxin requirements but fail damage and minor defect tolerances because the removal of the skins in the blanching process may expose additional instances of damage or minor defects that were hidden prior to blanching.

Previously, § 996.50(d) provided that peanut lots certified as meeting the "fall through" standards prior to blanching do not have to meet "fall through" standards when re-inspected after blanching. The Board recommended that a similar exception be applied for damage and minor defects to reduce handler-operating costs and to avoid a possible loss of peanuts. This action finalizes that rulemaking action.

Allow Handlers To Purchase Higher Moisture Peanuts

Section 996.30(b) *Moisture* specifies that "No handler or importer shall receive or acquire farmers stock peanuts for subsequent disposition to human consumption outlets containing more than 10.49 percent moisture: *Provided,* That peanuts of a higher moisture may be received and dried to not more 10.49 percent moisture prior to storing or milling: *Provided further,* That Virginia-type peanuts used for seed may be received or acquired containing up to 11.49 percent moisture."

Handlers may receive high moisture peanuts, but cannot acquire them. Because of this, any high moisture deliveries from a producer cannot be mixed with other high moisture

deliveries. The inability to commingle high moisture peanut deliveries for drying slows producer deliveries and raises drying costs. It also raises inspection fees because the peanuts need to be inspected a second time to verify their moisture levels prior to acquisition.

The Board requested that the 10.49 percent moisture standard be changed to allow handlers to acquire farmers stock peanuts with a moisture content up to 25 percent. The Board also recommended the addition of a provision requiring the producer and handler both to agree to the sale and acquisition of the high moisture peanuts. The moisture requirements for Virginia type peanuts for seed were not recommended for change.

According to some Board members, such a change could make a significant difference in the efficient acquisition and warehousing of farmers' stock peanuts each fall. Allowing the acquisition of high moisture peanuts would allow the handlers to accumulate a number of loads and batch dry them at the same time. These Board members indicted that this could speed up the drying, grading, and movement of peanuts at harvest, which would be especially important when adverse weather conditions during harvest could cause peanut quality to deteriorate. It would also reduce drying and inspection costs.

After considering this request and input from the Inspection Service, USDA continues to believe that the Board's recommendation needs further review and analysis. The Inspection Service has indicated that its current shelling equipment cannot properly shell peanuts with a moisture content higher than 16 to 18 percent, and that it would have difficulty grading such peanuts. Under currentinspection procedures, such peanuts are further dried by the producer before incoming inspection is completed.

Accordingly, USDA believes that the current standards and procedures should continue to allow the USDA, Board, and peanut industry time to study this issue further.

The Board met again on this issue in February 2004 and submitted another recommendation for 2004 and subsequent crop year peanuts. USDA is now reviewing that recommendation.

Increase Sound Whole Kernel Tolerance

This final rule continues to provide in § 996.31(a) that the sound whole tolerance for Runner, Spanish, and Valencia peanuts be not less than 10 percent splits, to bring all the tolerances for sound whole kernels in lots of splits into conformity with the tolerance for Virginia variety peanuts. These tolerances are in the Minimum Quality Standards table for split kernel lots in that paragraph. Previously, the sound whole kernel content for Runner, Spanish, and Valencia variety peanuts in lots of splits was four percent. Continuation of this change is expected to result in fewer split lot rejections for Runner, Spanish, and Valencia variety peanuts, and reduce handlers' reconditioning costs.

Effective Time

Section 996.75, Effective time, is finalized to apply to 2003 and subsequent crop year peanuts, to 2002 and 2001 crop year peanuts not yet inspected, and to failing peanuts that have not yet met disposition standards.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the RegulatoryFlexibility Analysis Act (RFA) the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The following discussion addresses RFA concerns and some of the numbers used in the interim final rule have been changed to reflect the availability of more recent data.

There are approximately 55 peanut shelling entities, operating approximately 70 shelling plants, and 25 importers subject to regulation under the peanut program. An estimated two-thirds of the handlers and nearly all of the importers may be classified as small entities, based on the documents and reports received by USDA. Small agricultural service firms, which include handlers and importers, are defined by the Small Business Administration (13 CFR 121.201), as those having annual receipts of less than $5,000,000.

An approximation of the number of peanut farms that could be considered small agricultural businesses under the SBA definition (less than $750,000 in annual receipts from agricultural sales) can be obtained from the 1997 Agricultural Census, which is the most recent information on the number of farms categorized by size. There were 10,505 peanut farms with sales valued at less than $500,000 in 1997, representing 86 percent of the total number of peanut farms in the U.S. (12,221). Since theAgricultural Census does not use $750,000 in sales as a category, $500,000 in sales is the closest approximation. Assuming that most of the sales from those farms are attributable to peanuts, the percentage of small peanut farms in 1997 (less than $750,000 in sales) was likely a few percentage points higher than 86 percent, and may have shifted a few percentage points since then. Thus, the proportion of small peanut farms is likely to bebetween 80 and 90 percent.

The two-year average peanut production for the 2001 and 2002 crop years was 3.799 billion pounds, harvested from 1.354 million acres, yielding 2,806 pounds per acre. The average value of production for the two-year period was $797.469 million, as reported on the National Agricultural Statistics Service (NASS) Web site (*http://www.nass.usda.gov:81/idepd/report.htm*) in December 2003. The average grower price over the two-year period was $0.21 per pound, and the average value per harvested acre was $588. Dividing the two year average value of production ($797.469 million) by the estimated 12,221 farms (1997 Agricultural Census) yields an estimated revenue per farm of approximately $65,254.

The Agricultural Census presents farm sizes in ranges of acres, and median farm size in 1997 was between 50 and 99 acres. The median is the midpoint ranging from the largest to the smallest. Median farm size in terms of annual sales revenue was between $100,000 and $250,000.

Several producers may own a single farm jointly, or, conversely, a producer may own several farms. In the peanut industry, there is, on average, more than one producer per farm. Dividing the two year average value of production of $797.469 million by an estimated 25,000 commercial producers (2003 Agricultural Statistics, USDA, Table 11–10) results in an estimate of average revenue per producer of approximately $31,899. The figures in this paragraph were adjusted from those in the interim final rule to reflect more recent information.

The current 14 custom blanchers, 8 custom remillers, 4 oilmill operators, 4 USDA and 15 USDA-approved private chemical (aflatoxin) laboratories are subject to this rule to the extent that they must comply with reconditioning provisions under § 996.50 and reporting and recordkeeping requirements under § 996.71. These requirements are applied uniformly to these entities, whether large or small. In addition, there are currently 10 State inspection

programs (Inspection Service) that will perform inspection under this peanut program.

Importers of peanuts cover a broad range of business entities, including fresh and processed food handlers and commodity brokers who buy agricultural products on behalf of others. Under the 2003 import quotas, approximately 25 business entities have only imported approximately 44 percent of the 126.6 million pounds of low duty quota peanuts (sometimes called duty free quota peanuts) compared with 37 entities which had imported 100 percent of the quotas by April 5, 2002. The current import quota period began January 2, 2003, for Mexico, April 1, 2003, for Argentina and "Other countries", and September 23, 2003, for Israel. Some large, corporate handlers are also importers of peanuts. AMS is not aware of any peanut producers who imported peanuts during any of the recent quota years. The majority of peanut importers have annual receipts under $5,000,000. Some importers use customs brokers' import services. These brokers are usually held accountable by the importer to see that entry requirements under § 996.60 and reporting and recordkeeping requirements under § 996.71 are met. These requirements are not applied disproportionately to small customs brokers.

In view of the foregoing, it can be concluded that the majority of peanut producers, handlers, importers, and above mentioned entities may be classified as small businesses. Also, financially interested persons who may appeal quality inspection results, and "holders of the title" to any lot of peanuts who may appeal aflatoxin test results may include small entities.

Smaller Kernel Sizes

Changing screen sizes used in handling peanuts will allow smaller kernels of all varieties to be used for edible purposes. Proponents of smaller kernel use claim that manufacturers of peanut products now have markets for smaller whole kernels, and that this rule change will enable them to take advantage of this recent shift in the marketplace. Market share for U.S. peanuts is expected to rise because the rule enables handlers to sell smaller peanuts to buyers who would otherwise purchase less expensive peanuts from other origins for manufacturing into peanut butter and paste, and other similar products. This rule continues to implement a relaxation in the utilization of small peanut kernels by changing the screens used for sorting sound whole kernels and kernels with splits from a slotted screen to one with round holes. The equipment for this change is currently in use for split lots in most shelling facilities. This change should therefore require little or no additional investment for most shellers, large or small.

The Inspection Service has a supply of screens for smaller peanut kernels to cover the five new shelling plants which were expected to begin operations by January 2004. In addition, the Inspection Service will provide screens for peanut shellers who need them, at a cost per screen of $55.00, plus shipping.

Although the chances of aflatoxin contamination in small kernels is not significant, proponents of the rule change claim that modern electronic color sorting technologies can sort out the moldy or defective kernels, thus ensuring that the new screens will not have a negative impact on the quality and wholesomeness of peanuts entering edible food channels. Shellers that already have this technology will have little or no additional cost.

Compliance officers report that out of approximately 70 shelling plants only 10 do not have electronic sorting technology. These latter plants only shell seed peanuts, which are used for planting and are not for shipment to the edible market.

Re-Inspection of Blanched Lots

This rule continues to allow shelled lots that are being reconditioned to be excluded from re-inspection for fall through, damaged kernels, and minor defects standards if the lot originally met these quality standards, but failed for aflatoxin. Such lots may be blanched to remove the aflatoxin contaminated kernels and do not have to be graded for fall through, damaged kernels, and minor defects upon reinspection. The primary benefit of this final rule is to reduce handler operating costs and avoid an additional loss of peanuts.

Allow Handlers To Acquire High Moisture Peanuts

This rule also maintains the longstanding maximum moisture tolerance for farmers stock peanuts received or acquired by handlers at 10.49 percent: *Provided,* That peanuts of a higher moisture content may be received and dried to not more than 10.49 percent prior to storing or milling; and *Provided further,* that Virginia-type peanuts used for seed may be received or acquired containing up to 11.49 percent moisture. As mentioned earlier, the Board met again to review this matter in February 2004 and made another recommendation to allow high moisture peanuts to be acquired. This recommendation is being reviewed by USDA.

Increased Sound Whole Kernel Tolerance

The Minimum Quality Standards table in § 996.31(a) provides standards for split kernel lots by specifying the maximum percentage of sound whole kernels permitted in a lot. For Virginia variety peanuts, sound whole kernel content has been limited to 10 percent of the lot by weight. For Runner, Spanish, and Valencia varieties, the sound whole kernel content had been limited to four percent prior to the issuance of the interim final rule.

The interim final rule relaxed the Sound Whole Kernel tolerance for Runner, Spanish, and Valencia variety peanuts to 10 percent, the same tolerance that has applied to Virginia variety peanuts. The primary benefit of this rule change would be to lower costs and increase sales revenue by rejecting fewer lots of the Runner, Spanish, and Valencia varieties for splits. No adverse financial impact is expected from making this standard uniform for all four varieties.

The impact of this change is not expected to be different between large and small entities.

Appeal Procedures

Continuing the addition of procedures allowing handlers, shellers, buyers or manufacturers to appeal aflatoxin test results and any financially interested person to appeal quality inspection results will be useful to those requesting appeals and to the inspectors drawing the samples and performing the inspections and tests. With specified appeal procedures, all parties involved should benefit.

USDA has considered alternatives to the suggested changes to the quality and handling standards. The Act requires USDA to consult with the Board on these standards. An alternative would have been to continue the 2002–03 crop year standards for the 2003–04 crop year without finalizing any of the recommended changes suggested by the Board at its April 30, 2003, meeting. The Board's meeting was widely publicized throughout the peanut industry and as a public meeting both large and small entities were allowed to attend and express their views.

Because of the anticipated benefits of some of the Board's recommended changes, USDA believes that finalizing those changes is preferable to continuing without any changes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule. A small

business guide on complying with AMS' fresh fruit, vegetable, and specialty crop programs similar to this peanut program may be viewed at the following Web site: *http//www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide or compliance with this program should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

The interim final rule concerning these changes was published in the **Federal Register** (68 FR 46919) on August 7, 2003. A document correcting the table specifying minimum quality standards was published in the September 11, 2003, issue of the **Federal Register** (68 FR 53490). Copies of the rule were provided to all Board members and peanut handlers. In addition, the rule was posted on the AMS web site specified above and was available through the Internet by the Office of the Federal Register. The interim final rule provided that comments received by September 8, 2003, would be considered in finalizing the rulemaking action.

Four comments were received from a peanut shellers' association, a peanut sheller, a growers' cooperative marketing association, and a manufacturer of peanut products.

The representative of the peanut shellers' association stated that while the association supported the Board's recommendation allowing handlers to acquire farmers stock peanuts with a moisture content up to 25 percent, provided they were dried to not more than 10.49 percent moisture prior to storing or milling, they understood USDA's concern about problems of grading efficiency from too high a level of moisture. The commenter urged the Secretary to allow up to 16 percent moisture. USDA continues to believe that further industry dialogue is needed on this matter. The Board met in February 2004 to further discuss this matter and made another recommendation. USDA is reviewing that recommendation.

The peanut product manufacturer believes that the proposal to allow smaller peanut kernels of all varieties to enter the edible channels is a move in the wrong direction. The commenter is concerned that an added quantity of small kernels in each lot will increase the aflatoxin "hot spots" and add to manufacturer risk and processing costs. Secondly, this commenter expressed concern that a greater incidence of off flavors in peanut products is likely to result from increased quantities of small kernels and that this will give product manufacturers reasons to reformulate their products using fewer peanuts. The representative of the peanut growers cooperative marketing association also mentioned the flavor characteristics of small kernels as a potential industry marketing problem.

The ARS study cited previously in this rule addressed the potential for increased aflatoxin arising from allowing more small kernels to be marketed for edible products. That study found that the aflatoxin impact of the smaller kernels was not significant enough to warrant concern.

With regard to the off flavor of small kernels, several industry representatives at last year's Board meeting also cited the flavor of small kernels as a quality factor that should weigh against the use of smaller peanut kernels. Such concerns were not mentioned or addressed at this year's Board meeting. However, as experience with the use of small kernels develops, further review of the matter may be appropriate.

The growers' association representative also reiterated concerns raised in writing to AMS in June 2003. The commenter contended that the farmers would not benefit from allowing smaller kernels because the rule change only applied to outgoing quality standards and not to incoming farmers stock.

This commenter believes that the screen sizes for incoming farmers stock peanuts should be changed to benefit producers. Currently, farmers stock peanuts are sampled and graded, resulting in a percentage of sound mature kernels and a percentage of other kernels. Under the outgoing screen size changes, some of the "other kernels" are allowed to be used by the sheller for edible higher valued purposes. The commenter stated that if the same screen sizes were applied to the farmers stock grade, then some of the "other kernels" which had been classified as such would become "sound mature kernels", and what were once 7 cents per pound peanuts would become 23–25 cents per pound peanuts as "sound mature kernels". That would substantially benefit the producer. The implementation of screen size changes for incoming farmers stock peanuts is outside the scope of this rulemaking action. Further, USDA believes that the Board should further review this issue.

An additional concern expressed by this commenter was that the benefit of additional small kernels purchased by handlers could be somewhat offset by subsequent reduced purchases of farmers stock peanuts, leading to forfeitures of peanuts under loan and increased government expenditures. The commenter estimated such a loss at over $18 million. However, USDA views this scenario as unlikely. The additional quantities of smaller kernels acquired by shellers are expected to be fully used by manufacturers to meet additional market needs, without offsetting other peanut sales. Accordingly, USDA continues to believe that the rule change will return a net benefit to the industry

This commenter also reiterated earlier concerns raised in writing to AMS in June 2003 concerning the reinspection of blanched peanuts and the potential for allowing poor quality peanuts to enter edible consumption channels. The commenter contended that these changes would allow pickouts with any amount of damage or undersize kernels to meet requirements for human consumption. There are appropriate safeguards in the program procedures to prevent such occurrences. There is a paper trail that ties the pickouts resulting after blanching back to the original lot. This would help prevent a new lot of pickouts with any content of excess damage, undersized kernels, or other defects to be used for human consumption.

This commenter also questioned the fact that the changes implemented by the interim final rule applied to 2002 and 2001 crop year peanuts not yet inspected and to failing peanuts that had not yet met disposition standards. This commenter believes that the standards should be applied on a crop year basis, rather than on a continuing basis.

With application on a crop year basis, the commenter believes that handlers with old crop inventories would not benefit from the changes for the new crop, and those who have disposed of their inventories would not be unfairly treated. Under the prior peanut marketing agreement program, regulations were effective on a crop year basis. However, in implementing section 1308 of the 2002 Farm Bill, USDA concluded that a continuing regulation rather than one effective on a crop year basis would better serve the peanut industry. Not only would this allow industry members to better plan their business activities but also changes could be made if deemed appropriate at any given time. Accordingly, no change is made based upon this comment.

Finally, the commenter expressed concern that comments from all persons received by AMS must be considered. USDA considers all available information from any interested person and source in our deliberations concerning this program. Such information was taken into consideration in this action.

The sheller comment correctly pointed out several mistakes in the Minimum Quality Standards table following paragraph (a) in § 996.31. These errors were corrected in a document published in the **Federal Register** on September 11, 2003 (68 FR 53490).

Information Collection

The Act specifies in section 1604(c)(2)(A) that the standards established pursuant to the Act, may be implemented without regard to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). Furthermore, this rule does not change the existing information collection burden.

After consideration of all relevant material presented, including the Board's recommendations, comments received, and other information, the interim final rule as published in the **Federal Register** on August 7, 2003 (68 FR 46919), together with the corrections published on September 11, 2003 (68 FR 53490) is finalized without change.

List of Subjects in 7 CFR Part 996

Food grades and standards, Imports, Peanuts, Reporting and recordkeeping requirements.

PART 996—MINIMUM QUALITY AND HANDLING STANDARDS FOR DOMESTIC AND IMPORTED PEANUTS MARKETED IN THE UNITED STATES

■ Accordingly, the interim final rule amending 7 CFR Part 996 which was published at 68 FR 46919 on August 7, 2003, and corrected at 68 FR 53490 on September 11, 2003, is adopted as a final rule without change.

Dated: June 2, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–12787 Filed 6–4–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1280

[No. LS–02–05]

Lamb Promotion, Research, and Information Program: Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, rules and regulations to implement the Lamb Promotion, Research, and Information Order (Order). The Order provides for the establishment of a national and industry-funded lamb promotion, research, and information program pursuant to the Commodity Promotion, Research, and Information Act of 1996 (Act). This final rule will implement Order provisions concerning the collection and remittance of assessments, procedures for obtaining a refund, reporting, and books and records.

EFFECTIVE DATE: July 7, 2004.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Payne, Chief; Marketing Programs Branch, Room 2638–S; Livestock and Seed Program; Agricultural Marketing Service (AMS), USDA; STOP 0251; 1400 Independence Avenue, SW., Washington, DC 20250–0251. Telephone number 202/720–1115, or by electronic mail at *Kenneth.Payne@usda.gov.*

SUPPLEMENTARY INFORMATION: *Prior documents in this proceeding:* Invitation to submit proposals—November 23, 1999 (64 FR 65665) and January 12, 2000 (65 FR 1825); proposed Lamb Promotion, Research, and Information Order—September 21, 2001 (66 FR 48764); and final Lamb Promotion, Research, and Information Order—April 11, 2002 (67 FR 17848).

Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order (E.O.) 12866 for this action.

Executive Order 12988

This rule has been reviewed under E.O. 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. Section 524 of the Act provides that the Act shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the Act, a person subject to the Order may file a petition with the Department stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not established in accordance with the law, and request a modification of the Order or an exemption from the Order. Any petition filed challenging the Order, any provision of the Order, or any obligation imposed in connection with the Order, shall be filed within 2 years after the effective date of the Order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Department will issue a ruling on the petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Department's final ruling. Service of process in a proceeding may be made on the Department by delivering a copy of the complaint to the Department. If the court determines that the ruling is not in accordance with the law, the court shall remand the matter to the Department with direction to make such ruling as the court determining to be in accordance with the law or to take such further action as, in the opinion of the court the law requires. The pendency of a petition filed or an action commenced shall not operate as a stay of any action authorized by section 520 of the Act to be taken to enforce, including any rule, order, or penalty in effect.

Regulatory Flexibility Act and Paperwork Reduction Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), AMS has considered the economic effect of this final action on small entities. The purpose of RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened.

There are approximately 51,800 producers, 15,000 seedstock producers, 100 feeders, 571 first handlers, and 15 exporters of lamb who will be subject to the program. Most of the lamb producers, seedstock producers, feeders, and exporters would be classified as small businesses under the criteria established by the Small Business Administration (SBA) (13 CFR 121.201). Most first handlers would not be classified as small businesses. SBA defines small agricultural service firms as those whose annual receipts are less than $5 million and small agricultural producers are defined as those having annual receipts of less than $750,000. This number and size data remains the same as it appeared in the earlier analyses for the Order. Further, for purposes of this discussion and the prior Order analyses, there are approximately 3,318 market agencies, which include commission merchants, auction markets, brokers, or livestock markets in the business of receiving lambs for sale or commission. Most market agencies would be classified under SBA criteria as small businesses.

Also, under the program, there are approximately 20 national, State, or regional associations or organizations that are made up of and represent producers, feeders, seedstock producers, exporters, and first handlers.

The Act authorizes generic programs of promotion, research, and information for agricultural commodities. Congress found that it is in the national public interest and vital to the welfare of the agricultural economy of the United States to maintain and expand existing markets and develop new markets and uses for agricultural commodities through industry-funded, Government-supervised, generic commodity promotion, research, and information programs.

The Order will develop and finance an effective and coordinated program of promotion, research, and information to maintain and expand the markets for lamb and lamb products. For the purposes of this program, the term "lamb" as defined in the Order means, "any ovine animal of any age, including ewes and rams." A proposed Order was published in the **Federal Register** on September 21, 2001 (66 FR 48764). The comment period ended on November 20, 2001. The final Order was published in the **Federal Register** on April 11, 2002 (67 FR 17848). Collection of assessments began on July 1, 2002.

The April 11, 2002, publication included a regulatory flexibility analysis concerning the provisions of the final Order. That analysis took into account Order provisions concerning the collection and remittance of assessments, refunds, reports, and books and records. This rule will implement Order provisions concerning these requirements.

In this final rule, the section on assessments contains provisions on sharing proceeds of sale, market agencies, failure to collect, death, bankruptcy, receivership or incapacity to act, remittance of assessments, and non-producer status for certain transactions. The section on refunds includes provisions concerning the procedure for obtaining a refund and application form, submission of refund application to the Department, proof of payment of assessments, and payment of refunds. In addition, this final rule details provisions regarding reporting and maintenance of books and records and it establishes a reporting period.

With the exception of the form, Statement of Certification of Non-Producer Status (LS–78), the interim final rule and this final rule did not increase the burden on the industry from that previously imposed by the Order. The information collection burden in connection with this form is minimal. The public reporting burden for this collection of information is estimated to average .03 hours per response for an estimate 3,318 respondents. The information collection requirements in the interim final rule were previously approved under OMB control number 0581–0203. That OMB control number has been merged into OMB control number 0581–0198.

Background

The Act (7 U.S.C. 7411–7425) authorizes the Department to establish generic programs of promotion, research, and information for agricultural commodities designed to strengthen an industry's position in the marketplace and to maintain and expand existing domestic and foreign markets and uses for agricultural commodities. Pursuant to the Act, a proposed Order was published in the **Federal Register** on September 21, 2001 (66 FR 48764). The final Order was published in the **Federal Register** on April 11, 2002 (67 FR 17848). Collection of assessments began on July 1, 2002. This program will be funded by assessments on domestic lamb producers, lamb feeders, exporters, and seedstock producers, in the amount of one-half cent ($.005) per pound when live lambs are sold. For purposes of this program, the term "lamb" as defined in the Order means, "any ovine animal of any age, including ewes and rams."

First handlers, which means the packer or other person who buys or takes possession of lambs from a producer or feeder for slaughter, including custom slaughter, will be assessed an additional $.30 cents per head purchased for slaughter or slaughtered by such first handler pursuant to a custom slaughter arrangement. Each person who processes or causes to be processed lamb or lamb products of that person's own production and markets the processed products will be assessed one-half cent ($.005) per pound on the live weight at the time of slaughter and will be required to pay an additional assessment of $.30 per head. Exporters who directly export lambs of their own production will be assessed in the amount of one-half cent ($.005) per pound of live lambs exported. Assessment rates may be adjusted in accordance with applicable provisions of the Act and the Order.

The Order also requires persons to collect and remit assessments to the Lamb Promotion, Research, and Information Board (Board). Each producer, feeder, or seedstock producer is obligated to pay that portion of the assessments that is equivalent to that producer's, feeder's, or seedstock producer's proportionate share and shall transfer the assessment to the subsequent purchaser, if applicable, and ultimately to the first handler or exporter who will remit the total assessments to the Board. Any person who processes or causes to be processed lamb or lamb products of the person's own production and markets the processed products will be required to pay an additional assessment and remit the total assessment to the Board. Each first handler who buys or takes possession of lambs from a producer or feeder for slaughter will be required to pay an additional assessment and remit the total assessment to the Board. Any person who exports live lambs will be required to collect and remit the total assessment to the Board at the time of export. Any exporter who directly exports lambs of their own production will pay an assessment to the Board. Additionally, a person who is a market agency; *i.e.*, commission merchant, auction market, or broker in the business of receiving such lamb or lamb products for sale on commission for or on behalf of a producer, feeder, or seedstock producer, will be required to collect an assessment and shall transfer the collected assessment on to the subsequent purchaser(s). Ultimately, the first handler or exporter will remit the total assessment to the Board.

The Order imposes certain recordkeeping and reporting requirements on persons subject to the Order. First handlers and exporters will collect and remit the assessments on lamb and lamb products to the Board. Their responsibilities will include accurate recordkeeping and accounting of the number of lambs purchased, total weight in pounds, the names of the producers, seedstock producers, and feeders, the purchase date, the amount of assessments remitted, and the dates the assessments were paid. The required reporting forms require the minimum information necessary to effectively carry out the requirements of the program, and to fulfill the intent of the Act. Such records and reports shall be retained for at least 2 years beyond the fiscal year of their applicability. Presently, most of these requirements are likely being conducted as a normal business practice. There will be a minimal burden on persons who are market agencies. It is not anticipated that they will be required to submit records of their transactions involving lamb purchases and the required assessment collection to the Board. Information on such transactions can be

obtained through an audit of the market agencies' records. Such records are already being maintained as a normal business practice. This will include such records or documents that evidence payment of an assessment pursuant to the requirements in § 1280.225(b). In addition, market agencies must certify, as required by regulations prescribed by the Department, that the provisions of § 1280.217(b) have been met. This final rule includes these regulations.

Comments

On June 7, 2002, the Department published in the **Federal Register** (67 FR 39249) an interim final rule with request for comments. The comment period ended August 6, 2002.

The Department received 10 comments in a timely manner. In addition, five late comments were received. The late comments generally reflected the substance of comments timely received. Comments were received from producers, auction market operators, general farm and sheep organizations, and an association representing marketing agents. The changes suggested by the commenters are discussed below.

One commenter suggested that remitters should be allowed to remit the assessment and appropriate paperwork via the Internet. Currently, the Board does not have the ability to accept the transfer of funds or required forms via the Internet. The Board may choose to explore this option after an analysis of the current collection procedures. Accordingly, this suggestion is not adopted.

One commenter urged the Department to embark on an educational campaign aimed at the marketing agencies so there is a better understanding of what is required of them and to recommend procedures that can be used to meet those requirements. The Department agrees that a continuing educational program is warranted. Since the Board was seated in November 2002, Board representatives have attended annual meetings of several industry groups in order to better inform industry representatives about the program. Additionally, Board representatives have visited individual marketing agencies (*i.e.*, auction markets) to better educate them regarding their responsibilities for collecting the assessment, passing the assessment on to the subsequent buyer, and remitting the assessment to the Board. The Board has made these types of outreach activities a staple of their client communications program. Accordingly, no change is needed as a result of this comment.

Some commenters recommended that the Department suspend the program until the Board is in place to allow sale and auction markets time to become fully educated and compliant with the Federal checkoff procedures. An extensive educational and outreach program was conducted beginning at least 2 years before the implementation of the program with the creation of the Exploration Team. In addition, in July 2002, the Department distributed informational packets to nearly 1,000 auction markets explaining the program. Further, the Board has been in place since November 2002. Accordingly, this suggestion is not adopted.

One commenter suggested that auction markets should not be required to complete a Non-Producer Status Form (LS–78). Auction markets generally facilitate the transaction between the seller and buyer and, usually, do not take ownership of the lambs. Under the Lamb Checkoff Program, auction markets are not required to complete the form unless they are seeking non-producer status. The Non-Producer Status form is intended for those market agents that are subject to § 1280.217 of the Order. Form LS–78 is intended to be completed only by those persons who buy and resell lambs within 10 days from the date of purchase on which the market agency acquired ownership. If an auction market buys animals in the company's name (taking title to the lambs) and resells them within 10 days from the date of purchase, they would be required to complete the form.

The Department received several comments regarding issues that were previously subject to public comment in connection with implementation of the Order and not part of the rules and regulations that are the subject of this rulemaking. The following comments were received: two commenters suggested that those persons who remit a small amount of assessment should be afforded the opportunity to remit the assessment when the amount reaches a certain dollar amount or be allowed to remit less often than required by the interim final rule; several commenters recommended assessing animals on a per head basis; one commenter suggested that ewes should be exempt from the assessment; several commenters suggested that the assessments should be collected and remitted at each transaction similar to other commodity checkoff programs; one commenter suggested that the Board should include one or two representatives from an association or organization representing livestock markets that sell sheep; and one commenter suggested that auction markets remit the assessment directly to the Board.

On September 21, 2001, the proposed Order was published in the **Federal Register** with a request for public comment. The final Order was published and became effective on April 12, 2002. The interim final rule was published in the **Federal Register** on June 7, 2002, with a request for public comment. The comment period ended on August 6, 2002. The purpose of this final rule is to implement provisions of the Order provisions concerning the collection and remittance of assessments, procedures for obtaining a refund, reporting, and books and records. The aforementioned comments were not within the scope of this final rule and would require a change to the Order and further rulemaking. Accordingly, these suggestions are not adopted in this action.

Accordingly, after consideration of all comments, the interim final rule, as published in the **Federal Register** (67 FR 39249, June 7, 2002) is finalized without change.

List of Subjects in 7 CFR Part 1280

Administrative practice and procedure, Advertising, Consumer Information, Marketing agreements, Lamb and lamb products, Reporting and record keeping requirements.

PART 1280—LAMB PROMOTION, RESEARCH, AND INFORMATION

■ Accordingly, the interim final rule amending 7 CFR part 1280 which was published at 67 FR 39249 on June 7, 2002, is adopted as a final rule without change.

Dated: June 2, 2004

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–12786 Filed 6–4–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Clindamycin Liquid

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental abbreviated new animal drug application (ANADA) filed by Phoenix Scientific, Inc. The supplemental ANADA provides for an expanded dose range and revised indications for the use of clindamycin hydrochloride oral liquid in both dogs and cats for the treatment of certain bacterial diseases.

DATES: This rule is effective June 7, 2004.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: *lluther@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION: Phoenix Scientific, Inc., 3915 South 48th St. Terrace, St. Joseph, MO 64503, filed a supplement to ANADA 200–193 for Clindamycin Hydrochloride Oral Liquid. The supplemental ANADA provides for an expanded dose range and revised indications for the use of clindamycin hydrochloride oral liquid in both dogs and cats for the treatment of certain bacterial diseases. The supplemental application is approved as of April 21, 2004, and the regulations are amended in 21 CFR 520.447 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 520.447 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 520.447 Clindamycin liquid.

* * * * *

(b) * * *

(1) Nos. 000009 and 059130 for use as in paragraphs (d)(1)(i)(A), (d)(1)(ii)(A), (d)(2)(i)(A), and (d)(2)(ii)(A) of this section.

(2) No. 059079 for use as in paragraphs (d)(1)(i)(B), (d)(1)(ii)(B), (d)(2)(i)(B), and (d)(2)(ii)(B) of this section.

* * * * *

Dated: May 19, 2004.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 04–12718 Filed 6–4–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Ivermectin and Clorsulon Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Merial Ltd. The supplemental NADA provides for an increased period of protection from reinfection with three species of internal parasites following administration of an ivermectin and clorsulon injectable solution to cattle.

DATES: This rule is effective June 7, 2004.

FOR FURTHER INFORMATION CONTACT: Janis Messenheimer, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7578, e-mail: *janis.messenheimer@fda.gov.*

SUPPLEMENTARY INFORMATION: Merial Ltd., 3239 Satellite Blvd., Bldg. 500, Duluth, GA 30096–4640, filed a supplement to NADA 140–833 for IVOMEC Plus (ivermectin and clorsulon) Injection for cattle. The application extends the period of persistent effectiveness for *Oesophagostomum radiatum* to 28 days after treatment, and for *Cooperia punctata* and *Trichostrongylus axei* to 21 days after treatment. A veal calf warning statement is being added because residue depletion data for this class of cattle has not been submitted to the application. The supplemental NADA is approved as of April 21, 2004, and 21 CFR 522.1193 is amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval qualifies for 3 years of marketing exclusivity beginning April 21, 2004. Exclusivity applies only to the extension of the persistent effectiveness claims for the three species of parasites listed previously in this document.

FDA has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 522.1193 is amended by revising paragraphs (d)(2) and (d)(3) to read as follows:

§ 522.1193 Ivermectin and clorsulon injection.

* * * * *

(d) * * *

(2) *Indications for use.* It is used in cattle for the treatment and control of gastrointestinal nematodes (adults and fourth-stage larvae) (*Haemonchus placei, Ostertagia ostertagi* (including inhibited larvae), *O. lyrata, Trichostrongylus axei, T. colubriformis, Cooperia oncophora, C. punctata, C. pectinata, Oesophagostomum radiatum, Nematodirus helvetianus* (adults only), *N. spathiger* (adults only), *Bunostomum phlebotomum*); lungworms (adults and fourth-stage larvae) (*Dictyocaulus viviparus*); liver flukes (adults only) (*Fasciola hepatica*); grubs (parasitic stages) (*Hypoderma bovis, H. lineatum*); lice (*Linognathus vituli, Haematopinus eurysternus, Solenopotes capillatus*); mites (*Psoroptes ovis* (syn. *P. communis* var. *bovis*), *Sarcoptes scabiei* var. *bovis*). It is also used to control infections of *D. viviparus* and *O. radiatum* for 28 days after treatment; *O. ostertagi, T. axei,* and *C. punctata* for 21 days after treatment; and *H. placei* and *C. oncophora* for 14 days after treatment.

(3) *Limitations.* For subcutaneous use only. Not for intravenous or intramuscular use. Do not treat cattle within 49 days of slaughter. Because a withdrawal time in milk has not been established, do not use in female dairy cattle of breeding age. Do not use in other animal species because severe adverse reactions, including fatalities in dogs, may result. Consult your veterinarian for assistance in the diagnosis, treatment, and control of parasitism. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal.

Dated: May 19, 2004.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 04–12717 Filed 6–4–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–04–027]

RIN 1625–AA09

Drawbridge Operation Regulations: Chelsea River, MA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary final rule governing the operation of the P.J. McArdle Bridge, mile 0.3, across the Chelsea River between East Boston and Chelsea, Massachusetts. This final rule will allow the bridge to remain in the closed position from 10 a.m. to 5 p.m. on June 5, 2004, to facilitate the First Annual Chelsea River Revel 5K Road Race. Vessels that can pass under the bridge without a bridge opening may do so at all times.

DATES: This rule is effective only on June 5, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD01–04–027] and are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, One South Street, New York, New York, 10004, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (212) 668–7165. The First Coast Guard District, Bridge Branch, maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Arca, Project Officer, First Coast Guard District, (212) 668–7069.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 27, 2004, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Chelsea River, Massachusetts, in the **Federal Register** (69 FR 22749). We received no comment letters in response to the notice of proposed rulemaking. No public hearing was requested and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**.

The Coast Guard did not receive the bridge owner's request to close the bridge until March 16, 2004; therefore, taking into consideration the time for the NPRM, it is necessary to make this rule effective in less than 30 days in order to allow the event to take place as scheduled on June 5, 2004. The Coast Guard believes this is reasonable because the bridge must remain closed during the running of the First Annual Chelsea River Revel 5K Road Race in the interest of public safety.

Background and Purpose

The P.J. McArdle Bridge has a vertical clearance of 21 feet at mean high water and 30 feet at mean low water in the closed position. The existing drawbridge operation regulations listed at 33 CFR § 117.593 require the bridge to open on signal at all times.

The owner of the bridge, the City of Boston, requested a temporary change to the drawbridge operation regulations to allow the bridge to remain in the closed position from 10 a.m. to 5 p.m. on June 5, 2004, to facilitate the running of the First Annual Chelsea River Revel 5K Road Race. Vessels that can pass under the bridge without a bridge opening may do so at all times.

The Chelsea River is predominantly transited by commercial tugs, barges, and oil tankers. The Coast Guard coordinated this closure with the mariners that normally use this waterway and no objections were received.

The Coast Guard did not receive the request to keep the bridge closed to facilitate the scheduled road race until March 16, 2004. A shortened comment period was necessary, due the short notice given to the Coast Guard, to allow this final rule to become effective in time for the start of First Annual Chelsea River Revel 5K Road Race on June 5, 2004.

The Coast Guard believes this final rule is needed in order to provide for public safety and the safety of the race participants.

Discussion of Comments and Changes

The Coast Guard received no comments in response to our notice of proposed rulemaking. No changes have been made to this final rule.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3), of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures

of the Department of Homeland Security (DHS).

This conclusion is based on the fact that the bridge closure is only 7 hours in duration.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities.

This conclusion is based on the fact that the bridge closure is only 7 hours in duration.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this final rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. It has been determined that this final rule does not significantly impact the environment.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. On June 5, 2004 only, § 117.593 is suspended and a new § 117.T594 is added to read as follows:

§ 117.T594 Chelsea River.

(a) All drawbridges across the Chelsea River shall open on signal; except that, the P.J. McArdle Bridge, mile 0.3, need

not open for the passage of vessel traffic from 10 a.m. to 5 p.m. on June 5, 2004.

(b) The opening signal for each drawbridge is two prolonged blasts followed by two short blasts and one prolonged blast. The acknowledging signal is three prolonged blasts when the draw can be opened immediately and two prolonged blasts when the draw cannot be opened or is open and must be closed.

Dated: May, 25, 2004.

John L. Grenier,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 04–12824 Filed 6–4–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 03–026]

RIN 1625–AA00

Security Zone; San Francisco Bay, Oakland Estuary, Alameda, CA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a security zone extending approximately 150 feet into the navigable waters of the Oakland Estuary, Alameda, California, surrounding the United States Coast Guard Island Pier. This action is necessary to provide for the security of the military service members on board vessels moored at the pier and the government property associated with these valuable national assets. This security zone prohibits all persons and vessels from entering, transiting through or, anchoring within a portion of the Oakland Estuary surrounding the Coast Guard Island Pier unless authorized by the Captain of the Port (COTP) or his designated representative.

DATES: This rule is effective July 7, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket COTP 03–026 and are available for inspection or copying at the Waterways Branch of the Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California, 94501, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Doug Ebbers, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437–3073.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On January 29, 2004, we published a notice of proposed rulemaking (NPRM) entitled "Security Zone; San Francisco Bay, Oakland Estuary, Alameda, CA" in the **Federal Register** (69 FR 4267) proposing to establish a permanent security zone extending approximately 150 feet into the navigable waters of the Oakland Estuary surrounding the United States Coast Guard Island Pier. We received one letter commenting on the proposed rule. No public hearing was requested, and none was held.

Penalties for Violating Security Zone

Vessels or persons violating this security zone will be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192. Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein, is punishable by civil penalties (not to exceed $32,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of $250,000), and in rem liability against the offending vessel. Any person who violates this section, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years. Vessels or persons violating this section are also subject to the penalties set forth in 50 U.S.C. 192: seizure and forfeiture of the vessel to the United States, a maximum criminal fine of $10,000, and imprisonment up to 10 years.

The Captain of the Port will enforce this zone and may enlist the aid and cooperation of any Federal, State, county, municipal, or private agency to assist in the enforcement of the regulation.

Background and Purpose

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan and the conflict in Iraq have made it prudent for U.S. ports to be on a higher state of alert because Al-Qaeda and other organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

The threat of maritime attacks is real as evidenced by the attack on the USS Cole and the subsequent attack in October 2002 against a tank vessel off the coast of Yemen. These threats manifest a continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002) that the security of the U.S. is endangered by the September 11, 2001 attacks and that such aggression continues to endanger the international relations of the United States. See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks (67 FR 58317, September 13, 2002), and Continuation of the National Emergency with Respect to Persons Who Commit, Threaten To Commit, Or Support Terrorism (67 FR 59447, September 20, 2002). The U.S. Maritime Administration (MARAD) in Advisory 02–07 advised U.S. shipping interests to maintain a heightened status of alert against possible terrorist attacks. MARAD more recently issued Advisory 03–05 informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attack to the transportation community in the United States. The ongoing foreign hostilities have made it prudent for U.S. ports and waterways to be on a higher state of alert because the Al-Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*), and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

In this particular rulemaking, to address the aforementioned security concerns and to take steps to prevent a terrorist attack against a Coast Guard Cutter, the Coast Guard is establishing a permanent, fixed security zone around and under the United States Coast Guard Island Pier that encompasses all

waters of the Oakland Estuary, extending from the surface to the sea floor, within approximately 150 feet of the pier. The perimeter of the security zone commences at a point on land approximately 150 feet north of the northern end of the Coast Guard Island Pier at latitude 37°46′53.6″ N and longitude 122°15′06.1″ W; thence out to the edge of the charted channel at latitude 37°46′52.3″ N and longitude 122°15′07.9″ W; thence along the edge of the charted channel to latitude 37°46′42.2″ N and longitude 122°14′50.5″W; thence to a point on land approximately 150 feet south of the southern end of the Coast Guard Island Pier at latitude 37°46′44.8″ N and longitude 122°4′48.8″ W; thence along the shoreline back to the beginning point, latitude 37°46′53.6″ N and longitude 122°15′06.1″ W.

This security zone is needed for national security reasons to protect Coast Guard Cutters, their crews, the public, transiting vessels, and adjacent waterfront facilities from potential subversive acts, accidents or other events of a similar nature. This security zone will help the Coast Guard to prevent vessels or persons from engaging in terrorist actions against Coast Guard Cutters that moor at the Coast Guard Island Pier by providing a surveillance and detection perimeter, and a margin of response time for security personnel. This rule, for security reasons, would prohibit entry of any vessel or person inside the security zone without specific authorization from the Captain of the Port or his designated representative. Due to heightened security concerns and the catastrophic impact a terrorist attack on a Coast Guard Cutter would have on the crew on board and surrounding government property, a security zone is prudent for this location.

Discussion of Comments and Changes

No public hearing was requested, and none was held. We received one comment on the proposed rule, which pointed out that two of the four geographical positions used in the NPRM to indicate the corner points of the 150-foot security zone around the Coast Guard Island Pier were incorrect. As a result, we have corrected the geographical positions to accurately reflect the 150-foot security zone in this final rule. This change is not considered significant since the general description of the security zone was correct in the NPRM and has not been changed.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

Although this regulation restricts access to the zone, the effect of this regulation is not significant because: (i) The zone encompasses only a small portion of the waterway; (ii) the zone does not encroach into the charted channel; (iii) vessels are able to pass safely around the zone; and (iv) vessels will be allowed to enter this zone on a case-by-case basis with permission of the Captain of the Port, or his designated representative.

The size of the security zone is the minimum necessary to provide adequate protection for Coast Guard Cutters, their crews, other vessels operating in the vicinity, adjoining areas and the public. The entities most likely to be affected are tug and barge companies transiting the Oakland Estuary and pleasure craft engaged in recreational activities and sightseeing.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities for several reasons: The zone does not extend into the charted channel, vessel traffic can pass safely around the area, and vessels engaged in recreational activities, sightseeing and commercial fishing have ample space outside of the security zone to engage in these activities. Small entities and the maritime public would be advised of this security zone via public notice to mariners.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal Regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–800–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because we are establishing a security zone. An "Environmental Analysis Check List" and a draft "Categorical Exclusion Determination" (CED) will be available in the docket where located under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.1190 to read as follows:

§ 165.1190 Security Zone; San Francisco Bay, Oakland Estuary, Alameda, CA.

(a) *Location.* The following area is a security zone: all navigable waters of the Oakland Estuary, California, from the surface to the sea floor, 150 feet into the Oakland Estuary surrounding the Coast Guard Island Pier. The perimeter of the security zone commences at a point on land approximately 150 feet north of the northern end of the Coast Guard Island Pier at latitude 37°46′53.6″ N and longitude 122°15′06.1″ W; thence out to the edge of the charted channel at latitude 37°46′52.3″ N and longitude 122°15′07.9″ W; thence along the edge of the charted channel to latitude 37°46′42.2″ N and longitude 122°14′50.5″ W; thence to a point on land approximately 150 feet south of the southern end of the Coast Guard Island Pier at latitude 37°46′44.8″ N and longitude 122°14′48.8″ W; thence along the shoreline back to the beginning point, latitude 37°46′53.6″ N and longitude 122°15′06.1″ W.

(b) *Regulations.* (1) Under § 165.33, entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, San Francisco Bay, or his designated representative.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 415–399–3547 or on VHF–FM channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his designated representative.

Dated: May 5, 2004.

Gerald M. Swanson,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay, California.

[FR Doc. 04–12825 Filed 6–4–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 295–0441a; FRL–7667–8]

Revisions to the California State Implementation Plan, Great Basin Unified Air Pollution Control District and Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Great Basin Unified Air Pollution Control District (GBUAPCD) and Ventura County Air Pollution Control District (VCAPCD) portions of the California State Implementation Plan (SIP). The GBUAPCD revisions concern the emission of particulate matter (PM–10) from open fires and incinerator burning. The VCAPCD revisions concern the emission of particulate matter (PM–10) from open burning. We are approving local rules that administer regulations and regulate emission sources under the Clean Air Act as amended (CAA or the Act).

DATES: This rule is effective on August 6, 2004 without further notice, unless EPA receives adverse comments by July 7, 2004. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail or e-mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, or e-mail to *steckel.andrew@epa.gov*, or submit comments at *http://www.regulations.gov*.

You can inspect copies of the submitted rule revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted rule revisions and TSDs at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Great Basin Unified Air Pollution Control District, 157 Short Street, Suite 6, Bishop, CA 93514.

Ventura County Air Pollution Control District, 669 Country Square Drive, Ventura, CA 93003.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4118, *petersen.alfred@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

Table of Contents

I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the date that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Revised or amended	Submitted
GBUAPCD	406	Open Outdoor Fires	09/24/03 Revised	11/04/03
GBUAPCD	407	Incinerator Burning	09/24/03 Revised	11/04/03
VCAPCD	56	Open Burning	11/11/03 Amended	01/15/04

On December 23, 2003, the submittal of GBUAPCD Rules 406 and 407 was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review. On March 1, 2004, the submittal of VCAPCD Rule 56 was found to meet the completeness criteria.

B. Are There Other Versions of These Rules?

We approved GBUAPCD Rule 406 into the SIP on June 6, 1977 (42 FR 28883), originally adopted on January 21, 1976. We approved GBUAPCD Rule 407 into the SIP on June 6, 1977 (42 FR 28883), originally adopted on September 5, 1974. We approved VCAPCD Rule 56 into the SIP on May 18, 1999 (64 FR 26876), originally adopted on October 22, 1968.

C. What Is the Purpose of the Submitted Rule Revisions?

PM–10 harms human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control PM–10 emissions.

The purpose of the revision to Rule 406 is as follows:

- To limit burning of household waste at single- or two-family dwellings to only dry non-glossy paper and cardboard and dry natural vegetation in areas granted a temporary exemption pursuant to California Code of Regulations (CCR), title 17, section 93113(e).

The purpose of the revisions to Rule 407 are as follows:

- To limit burning of household waste at single- or two-family dwellings to only dry non-glossy paper and cardboard and dry natural vegetation in areas granted a temporary exemption pursuant to CCR, title 17, section 93113(e).
- To allow this type of burning only with a valid permit on a burn day declared by the California Air Resources Board.

Revisions to Rule 56 are made to comply with revised California smoke management guidelines as follows:

- Requirements are now stated separately for open burning and for prescribed burning.
- Requirements for drying time are increased for trees and vegetation.
- Deleted is the exemption to allow open burning on no-burn days at elevations over 3,000 feet.
- Open burning is now prohibited when wind may carry emissions into smoke sensitive areas.
- Three different periods instead of two are now allowed for ignition in daylight hours.
- The VCAPCD may now allow open burning only on Burn Days declared by the District.
- The VCAPCD may now allow individual burns only on Marginal Burn Days declared by the District if impacts to smoke sensitive areas are not expected.
- The VCAPCD is now required to restrict burning in different regions to minimize impacts on smoke sensitive areas, cumulative smoke impacts, and public nuisance.
- A land manager must now submit a comprehensive smoke management plan for prescribed burning.
- For burns over 250 acres, the land manager must now also submit a post-burn evaluation.
- Added is an exemption to allow burning of unserviceable American flags.
- Added is an exemption to burn for the remediation of an oil spill consistent with State law.
- Various definitions are added and others revised to clarify or place further restrictions on burning.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA) and must not relax existing requirements (see sections 110(l) and 193). BACM/BACT and RACM/RACT are not required for a PM–10 attainment area (see section 189(a) and 189(b)). GBUAPCD and VCAPCD are PM–10 attainment areas.

The following guidance documents were used for reference:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans*, U.S. EPA, 40 CFR part 51.
- *General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990*, 57 FR 13498, 13540 (April 16, 1992).
- *General Preamble Appendix C3—Prescribed Burning Control Measures* (57 FR 18072, April 28, 1992).
- *Prescribed Burning Background Document and Technical Information Document for Best Available Control Measures* (EPA–450/2–92–003).
- *PM–10 Attainment Demonstration Maintenance Plan and Redesignation Request*, KCAPCD (September 5, 3002).
- *Smoke Management Guidelines for Agricultural and Prescribed Burning*, California Code of Regulations, title 17, 80100–80320 (March 14, 2001).

B. Do the Rules Meet the Evaluation Criteria?

We believe the rules are consistent with the relevant policy and guidance regarding enforceability, SIP relaxations, and fulfilling RACM/RACT.

The TSDs have more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing the approval without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by July 7, 2004, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on August 6, 2004. This will incorporate these rules into the federally-enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this direct final rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 6, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 12, 2004.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(321)(i)(C) and (328)i)(A)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(321) * * *

(i) * * *

(C) Great Basin Unified Air Pollution Control District.

(*1*) Rule 406, adopted on January 21, 1976 and revised on September 24, 2003.

(*2*) Rule 407, adopted on September 5, 1974 and revised on September 24, 2003.

* * * * *

(328) * * *

(i) * * *

(A) * * *

(2) Rule 56, adopted on October 22, 1968 and amended on November 11, 2003.

* * * * *

[FR Doc. 04–12767 Filed 6–4–04; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[NV053–0076a; FRL–7670–1]

Delegation of National Emission Standards for Hazardous Air Pollutants for Source Categories; State of Nevada; Nevada Division of Environmental Protection—Bureau of Air Pollution Control

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is amending certain regulations to reflect the current delegation status of national emission standards for hazardous air pollutants (NESHAPs) in Nevada. Several NESHAPs were delegated to the Nevada Division of Environmental Protection—Bureau of Air Pollution Control on January 12, 2004, and the purpose of this action is to update the listing in the Code of Federal Regulations.

DATES: This rule is effective on August 6, 2004, without further notice, unless EPA receives adverse comments by July 7, 2004. If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect.

ADDRESSES: Send comments to Andrew Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, or e-mail to *steckel.andrew@epa.gov*, or submit comments at *http://www.regulations.gov*. Copies of the request for delegation and other supporting documentation are available for public inspection (docket number A–96–25) at the following locations by appointment:

U.S. Environmental Protection Agency, Region IX, Rulemaking Office (AIR–4), Air Division, 75 Hawthorne Street, San Francisco, California 94105–3901.

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mae Wang, EPA Region IX, (415) 947–4124, *wang.mae@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

A. Delegation of NESHAPs

Section 112(l) of the Clean Air Act, as amended in 1990 (CAA), authorizes EPA to delegate to State or local air pollution control agencies the authority to implement and enforce the standards set out in the Code of Federal Regulations, Title 40 (40 CFR), part 63, National Emission Standards for Hazardous Air Pollutants for Source Categories. On November 26, 1993, EPA promulgated regulations, codified at 40 CFR part 63, subpart E (hereinafter referred to as "Subpart E"), establishing procedures for EPA's approval of State rules or programs under section 112(1) (*see* 58 FR 62262). Subpart E was later amended on September 14, 2000 (*see* 65 FR 55810).

Any request for approval under CAA section 112(l) must meet the approval criteria in 112(l)(5) and subpart E. To streamline the approval process for future applications, a State or local agency may submit a one-time demonstration that it has adequate authorities and resources to implement and enforce any CAA section 112 standards. If such demonstration is approved, then the State or local agency would no longer need to resubmit a demonstration of these same authorities and resources for every subsequent request for delegation of CAA section 112 standards. However, EPA maintains the authority to withdraw its approval if the State does not adequately implement or enforce an approved rule or program.

B. NDEP Delegations

On May 27, 1998, EPA published a direct final action delegating to the Nevada Division of Environmental Protection (NDEP) several NESHAPs and approving NDEP's delegation mechanism for future standards (*see* 63 FR 28906). That action explained the procedure for EPA to grant delegations to NDEP by letter, with periodic **Federal Register** listings of standards that have been delegated. On November 21, 2003, the Nevada Division of Environmental Protection—Bureau of Air Pollution Control (NDEP–BAPC) requested delegation of the following NESHAPs contained in 40 CFR part 63:

- Subpart F—National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry
- Subpart G—National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater
- Subpart H—National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks
- Subpart I—National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks
- Subpart L—National Emission Standards for Coke Oven Batteries
- Subpart O—Ethylene Oxide Emission Standards for Sterilization Facilities
- Subpart R—National Emision Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations)
- Subpart S—NESHAP from the Pulp and Paper Industry
- Subpart U—National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins
- Subpart W—NESHAP for Epoxy Resin Production and Non-Nylon Polyamides Production
- Subpart X—NESHAP from Secondary Lead Smelting
- Subpart Y—NESHAP for Marine Tank Vessel Loading Operations
- Subpart AA—NESHAP from Phosphoric Acid Manufacturing Plants
- Subpart BB—NESHAP from Phosphate Fertilizers Production Plants
- Subpart CC—NESHAP from Petroleum Refineries
- Subpart DD—NESHAP from Off-Site Waste and Recovery Operations
- Subpart EE—NESHAP for Magnetic Tape Manufacturing Operations
- Subpart GG—National Emission Standards for Aerospace Manufacturing and Rework Facilities
- Subpart HH—NESHAP from Oil and Natural Gas Production Facilities
- Subpart II—NESHAP for Shipbuilding and Ship Repair (Surface Coating)
- Subpart LL—NESHAP for Primary Aluminum Reduction Plants
- Subpart SS—National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process
- Subpart TT—National Emission Standards for Equipment Leaks—Control Level 1
- Subpart UU—National Emission Standards for Equipment Leaks—Control Level 2 Standards
- Subpart WW—National Emission Standards for Storage Vessels (Tanks)—Control Level 2

- Subpart YY—NESHAP for Source Categories: Generic MACT Standards
- Subpart CCC—NESHAP for Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants
- Subpart DDD—NESHAP for Mineral Wool Production
- Subpart EEE—NESHAP from Hazardous Waste Combustors
- Subpart GGG—National Emission Standards for Pharmaceuticals Production
- Subpart HHH—NESHAP from Natural Gas Transmission and Storage Facilities
- Subpart III—NESHAP for Flexible Polyurethane Foam Production
- Subpart JJJ—National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins
- Subpart LLL—NESHAP from the Portland Cement Manufacturing Industry
- Subpart MMM—NESHAP for Pesticide Active Ingredient Production
- Subpart NNN—NESHAP for Wool Fiberglass Manufacturing
- Subpart OOO—National Emission Standards for Hazardous Air Pollutant Emissions: Manufacture of Amino/Phenolic Resins

On January 12, 2004, EPA granted delegation to NDEP–BAPC for these NESHAPs. EPA also delegated to NDEP–BAPC any amendments to previously-delegated NESHAPs, as of July 1, 2000. Today's action is serving to notify the public of the January 12, 2004, delegation and to codify these delegations into the Code of Federal Regulations.

NDEP–BAPC also included a request for delegation of the regulations implementing CAA sections 112(g) and 112(j), codified at 40 CFR part 63, subpart B. These requirements need not be delegated under the section 112(l) approval process. When promulgating the regulations implementing section 112(g), EPA stated its view that "the Act directly confers on the permitting authority the obligation to implement section 112(g) and to adopt a program which conforms to the requirements of this rule. Therefore, the permitting authority need not apply for approval under section 112(l) in order to use its own program to implement section 112(g)" (*see* 61 FR 68397). Similarly, when promulgating the regulations implementing section 112(j), EPA stated its belief that "section 112(l) approvals do not have a great deal of overlap with the section 112(j) provision, because section 112(j) is designed to use the title V permit process as the primary vehicle for establishing requirements" (*see* 59 FR 26447). Therefore, State or local agencies implementing the requirements under sections 112(g) and 112(j) do not need approval under section 112(l). As a result, EPA is not taking action to delegate 40 CFR Part 63, Subpart B, to NDEP–BAPC.

II. EPA Action

Today's document serves to notify the public that on January 12, 2004, EPA granted to NDEP–BAPC delegation for the NESHAPs listed above, as well as any amendments to previously-delegated NESHAPs as of July 1, 2000. Today's action will codify these delegations into the Code of Federal Regulations.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely updates the list of approved delegations in the Code of Federal Regulations and imposes no additional requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule does not impose any additional enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely updates the list of already-approved delegations, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing State delegation submissions, our role is to approve State choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), we have no authority to disapprove State submissions for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews State submissions, to use VCS in place of State submissions that otherwise satisfy the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 6, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (*see* section 307(b)(2)).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of section 112 of the Clean Air Act, as amended, 42 U.S.C. 7412.

Dated: May 18, 2004.

Deborah Jordan,

Director, Air Division, Region IX.

■ Title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart E—Approval of State Programs and Delegation of Federal Authorities

■ 2. Section 63.99 is amended by revising paragraph (a)(28)(i) to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(28) * * *

(i) The following table lists the specific part 63 standards that have been delegated unchanged to the air pollution control agencies in the State of Nevada. The (X) symbol is used to indicate each category that has been delegated.

DELEGATION STATUS FOR PART 63 STANDARDS—NEVADA

Subpart	Description	NDEP[1]	WCAQMD[2]	CCDAQM[3]
A	General Provisions	X	X	
F	Synthetic Organic Chemical Manufacturing Industry	X		
G	Synthetic Organic Chemical Manufacturing Industry: Process Vents, Storage Vessels, Transfer Operations, and Wastewater.	X		
H	Organic Hazardous Air Pollutants: Equipment Leaks	X		
I	Organic Hazardous Air Pollutants: Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.	X		
L	Coke Oven Batteries	X		
M	Perchloroethylene Dry Cleaning	X	X	
N	Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.	X	X	
O	Ethylene Oxide Sterilization Facilities	X	X	
Q	Industrial Process Cooling Towers	X		
R	Gasoline Distribution Facilities	X	X	
S	Pulp and Paper	X		
T	Halogenated Solvent Cleaning	X	X	
U	Group I Polymers and Resins	X		
W	Epoxy Resins Production and Non-Nylon Polyamides Production	X		
X	Secondary Lead Smelting	X		
Y	Marine Tank Vessel Loading Operations	X		
AA	Phosphoric Acid Manufacturing Plants	X		
BB	Phosphate Fertilizers Production Plants	X		
CC	Petroleum Refineries	X		
DD	Off-Site Waste and Recovery Operations	X		
EE	Magnetic Tape Manufacturing Operations	X		
GG	Aerospace Manufacturing and Rework Facilities	X		
HH	Oil and Natural Gas Production Facilities	X		
II	Shipbuilding and Ship Repair (Surface Coating)	X		
JJ	Wood Furniture Manufacturing Operations	X		
KK	Printing and Publishing Industry	X	X	
LL	Primary Aluminum Reduction Plants	X		
OO	Tanks—Level 1	X		
PP	Containers	X		
QQ	Surface Impoundments	X		
RR	Individual Drain Systems	X		
SS	Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.	X		
TT	Equipment Leaks—Control Level 1	X		
UU	Equipment Leaks—Control Level 2	X		
VV	Oil-Water Separators and Organic-Water Separators	X		
WW	Storage Vessels (Tanks)—Control Level 2	X		
YY	Generic MACT Standards	X		
CCC	Steel Pickling	X		
DDD	Mineral Wool Production	X		
EEE	Hazardous Waste Combustors	X		
GGG	Pharmaceuticals Production	X		
HHH	Natural Gas Transmission and Storage Facilities	X		
III	Flexible Polyurethane Foam Production	X		
JJJ	Group IV Polymers and Resins	X		
LLL	Portland Cement Manufacturing Industry	X		
MMM	Pesticide Active Ingredient Production	X		
NNN	Wool Fiberglass Manufacturing	X		

DELEGATION STATUS FOR PART 63 STANDARDS—NEVADA—Continued

Subpart	Description	NDEP[1]	WCAQMD[2]	CCDAQM[3]
OOO	Manufacture of Amino/Phenolic Resins	X		

[1] Nevada Division of Environmental Protection.
[2] Washoe County Air Quality Management Division.
[3] Clark County Department of Air Quality Management.

* * * * *

[FR Doc. 04–12773 Filed 6–4–04; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 25 and 101

[ET Docket No. 98–206; RM–9147; RM–9245; DA 04–1554]

Amendment of the Commission's Rules Governing Multichannel Video Distribution and Data Service in the 12.2–12.7 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On April 11, 2002, the Commission adopted rules to establish technical, service and licensing rules governing Multichannel Video Distribution and Data Service (MVDDS) in the 12 GHz band. Because an error was made in the publication of the final rules, this document contains correcting amendments to the final rules that were published in the **Federal Register**. This document also updates § 101.1417 to reflect the Commission's reorganization of the Wireless Telecommunications Bureau in 2003.

DATES: Effective on June 7, 2004.

FOR FURTHER INFORMATION CONTACT: Jennifer Mock, Broadband Division, Wireless Telecommunications Bureau at (202) 418–2487.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published in the **Federal Register** final rules, 67 FR 43031, (June 26, 2002), in the above captioned proceeding (*Memorandum Opinion and Order and Second Report and Order*). In six rules related to MVDDS, there were errors in the version published in the **Federal Register**. This document corrects them to conform to the rules adopted by the Commission on April 11, 2002, and released on May 23, 2002, in addition to amendments to the rules subsequently adopted by the Commission. The subsequent rule changes were adopted by the Commission and published in the **Federal Register** in 68 FR 4953, (January 31, 2003), (Report and Order in WT Dkt. 00–19), 68 FR 16446, April 4, 2003, (Third Memorandum Opinion and Order); 68 FR 42610, (July 18, 2003), (Third Report and Order); 68 FR 43942, (July 25, 2003), (Fourth Memorandum Opinion and Order); 68 FR 34336, (June 9, 2003), (Second Memorandum Opinion and Order); as well as in errata released on July 31, 2003 (18 FCC Rcd 15310), and August 14, 2002 (17 FCC Rcd 15849).

The rules require correction as follows:

- In section 25.208(o)(1) and (2), negative signs must be inserted to precede numbers at the beginning of each paragraph.
- Section 101.105 must be revised to conform to the adopted version of the rule and to correct other editorial errors.
- Section 101.111 must be revised because the instruction published at 68 FR 43946 (Fourth MO&O revisions to § 101.111) neglected to reflect revisions to this rule that were published in the **Federal Register**, 68 FR 4956, (January 31, 2003).
- Section 101.1412 must be revised to conform to the adopted version of the rule, which applies the cable cross-ownership rule where a particular percentage of households that subscribe to one or more Multichannel Video Program Distributors (MPVDs) within the MVDDS operator's license area.
- The title of § 101.1421 must be revised to conform to the title appearing in the Table of Contents.
- Section 101.1440(f) requires revision to conform to the adopted version of the rule, specifically clarifying circumstances under which a modification to an MVDDS station would trigger requirements to protect DBS receivers.

In this document, revisions to §§ 25.208, 101.105, and 101.111, reflect the specific revisions. The rules in part 101, subpart P (§§ 101.1401–101.1440) are republished in their entirety for clarity; however, only §§ 101.1412, 101.1421, and 101.1440 require editorial correction. In addition, § 101.1417 requires a nonsubstantive update to reflect the Commission's reorganization of the Wireless Telecommunications Bureau, effective November 13, 2003, under which the relevant duties of the former Public Safety and Private Wireless Division were assumed by the Broadband Division. *See* Reorganization of the Wireless Telecommunications Bureau, Order, 18 FCC Rcd 25414 (2003). Because we are publishing the Order, DA 04–1554 (rel. May 28, 2004), the Erratum, DA 04–336 (rel. Feb. 9, 2004), 19 FCC Rcd 2355 (WTB BD 2004) will not be published in the **Federal Register**.

Procedural Matters

Any impact as defined by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, the Congressional Review Act (CRA), and the Regulatory Flexibility Act of 1980, as amended (RFA) was addressed at the time of adoption and release of the *Memorandum Opinion and Order and Second Report and Order*, FCC 02–116, adopted on April 11, 2002, and released on May 23, 2003, 67 FR 43031 (June 26, 2002). Therefore, the PRA, CRA and RFA requirements have already been fulfilled for these rules.

List of Subjects in 47 CFR Parts 25 and 101

Communications common carriers, Communications equipment, Radio.

Federal Communications Commission.

Andrew S. Fishel,

Managing Director.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 25 and 101 as follows:

PART 25—SATELLITE COMMUNICATIONS

■ 1. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies sections 4, 301, 302, 303, 307, 309 and 332 of the Communications Act, as amended, 47 U.S.C. 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

■ 2. Section 25.208 is amended by revising paragraphs (o)(1) and (2) to read as follows:

§ 25.208 Power flux density limits.

* * * * *

(o) * * *

(1) -158 dB(W/m^2) in any 4 kHz band for angles of arrival between 0 and

2 degrees above the horizontal plane; and

(2) $-158 + 3.33(\delta - 2)$ dB(W/m²) in any 4 kHz band for angles of arrival (δ) (in degrees) between 2 and 5 degrees above the horizontal plane.

* * * * *

PART 101—FIXED MICROWAVE SERVICES

■ 3. The authority citation for part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

■ 4. Section 101.105 is amended by revising paragraph (a)(4) and paragraph (d) introductory text to read as follows:

§ 101.105 Interference protection criteria.

(a) * * *

(4) 12.2–12.7 GHz band. (i) To accommodate co-primary NGSO FSS earth stations in the 12.2–12.7 GHz band, the PFD of an MVDDS transmitting system must not exceed -135 dBW/m² in any 4 kHz band at a reference point at the surface of the earth at a distance greater than 3 kilometers from the MVDDS transmitting antenna.

(ii) To accommodate co-primary Direct Broadcast Satellite Service earth stations, an MVDDS transmitting system must not exceed the EPFD levels specified in paragraph (a)(4)(ii)(B) of this section at any DBS subscriber location in accordance with the procedures listed in § 101.1440 of this part.

(A) Definition of equivalent power flux density: The equivalent power flux density (EPFD) is the power flux density produced at a direct broadcast service (DBS) receive earth station, taking into account shielding effects and the off-axis discrimination of the receiving antenna assumed to be pointing at the appropriate DBS satellite(s) from the transmitting antenna of a multichannel video distribution and data service (MVDDS) transmit station. The EPFD in dBW/m² in the reference bandwidth is calculated using the following formula:

$$EPFD = 10 * \log_{10}\left[\frac{P_{out} * G_m(\theta_m, \phi_m) * G_e(\theta_e, \phi_e) * I}{G_{e,max} * 4 * \pi * d^2}\right]$$

Where:

P_{out} = Total output power of the MVDDS transmitter (watts) into antenna

G_m (θ_m,φ_m = Gain of the MVDDS antenna in the direction of the DBS earth station

G_e (θ_e,φ_e = Gain of the earth station in the direction of the MVDDS antenna

I = Interference scaling factor for the earth station (1 dB for MVDDS transmitters employing the modulation discussed in Section 3.1.5 of the MITRE Report (*i.e.*, a QPSK modulated signal passed through a square-root raised cosine filter). For other modulation and filtering schemes, the interference scaling factor can be measured using the procedures described in Appendix A of the MITRE Report available at *http://www.fcc.gov/oet/info/mitrereport/mitrereport_4_01.pdf*).

$G_{e,max}$ = Maximum gain of the DBS earth station

d = the distance between the MVDDS transmitting antenna and the DBS earth station (meters)

(B) Regional equivalent power flux density levels:

(*1*) -168.4 dBW/m²/4kHz in the Eastern region consisting of the District of Columbia and the following states: Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Louisiana, and Florida;

(2) -169.8 dBW/m²/4kHz in the Midwestern region consisting of the following states: Ohio, Michigan, Indiana, Wisconsin, Illinois, Minnesota, Iowa, Missouri, Arkansas, South Dakota, Nebraska, Kansas, Oklahoma, and Texas;

(*3*) -171.0 dBW/m²/4kHz in the Southwestern region consisting of the following states: Wyoming, Colorado, New Mexico, Utah, Arizona, Nevada, and California (south of 37° North Latitude);

(*4*) -172.1 dBW/m²/4kHz in the Northwestern region consisting of the following states: Washington, Oregon, California (north of 37° North Latitude), Idaho, Montana, North Dakota, Alaska, and Hawaii.

(iii) Except for public safety entities, harmful interference protection from MVDDS stations to incumbent point-to-point 12 GHz fixed stations is not required. Incumbent point-to-point private operational fixed 12 GHz stations, except for public safety entities, are required to protect MVDDS stations under the process described in § 101.103(d) of this part.

* * * * *

(d) Effective August 1, 1985, when a fixed station that conforms to the technical standards of this subpart (or, in the case of the 12,200–12,700 MHz band, for an incumbent non-MVDDS station or a direct broadcast satellite station) receives or will receive interference in excess of the levels specified in this section as a result of an existing licensee's use of non-conforming equipment authorized between July 20, 1961 and July 1, 1976, and the interference would not result if the interfering station's equipment complied with the current technical standards, the licensee of the non-conforming station must take whatever steps are necessary to correct the situation up to the point of installing equipment which fully conforms to the technical standards of this subpart. In such cases, if the engineering analysis demonstrates that:

* * * * *

■ 5. Section 101.111 is amended by revising paragraph (a)(2)(i) to read as follows:

§ 101.111 Emission limitations.

(a) * * *

(2) * * *

(i) For operating frequencies below 15 GHz, in any 4 KHz band, the center frequency of which is removed from the assigned frequency by more than 50 percent up to and including 250 percent of the authorized bandwidth: As specified by the following equation but in no event less than 50 decibels:

A = 35 + 0.8(P − 50) + 10 Log10 B. (Attenuation greater than 80 decibels or to an absolute power of less than -13 dBm/1MHz is not required.) where:

A = Attenuation (in decibels) below the mean output power level.

P = Percent removed from the center frequency of the transmitter bandwidth.

B = Authorized bandwidth in MHz.

Note: MVDDS operations in the 12.2–12.7 GHz band shall use 24 megahertz for the value of B in the emission mask equation set forth in this section. The emission mask limitation shall only apply at the 12.2–12.7 GHz band edges and does not restrict MVDDS channelization bandwidth within the band.

* * * * *

■ 6. Part 101, subpart P is revised to read as follows:

Subpart P—Multichannel Video Distribution and Data Service Rules for the 12.2–12.7 GHz Band

Sec.

§ 101.1401 Service areas.

Multichannel Video Distribution and Data Service (MVDDS) is licensed on the basis of Designated Market Areas (DMAs). The 214 DMA service areas are based on the 210 Designated Market Areas delineated by Nielsen Media Research and published in its publication entitled U.S. Television Household Estimates, September 2002, plus four FCC-defined DMA-like service areas.

(a) Alaska—Balance of State (all geographic areas of Alaska not included in Nielsen's three DMAs for the state: Anchorage, Fairbanks, and Juneau);

(b) Guam and the Northern Mariana Islands;

(c) Puerto Rico and the United States Virgin Islands; and

(d) American Samoa.

§ 101.1403 Broadcast carriage requirements.

MVDDS licensees are not required to provide all local television channels to subscribers within its area and thus are not required to comply with the must-carry rules, nor the local signal carriage requirements of the *Rural Local Broadcast Signal Act.* See Multichannel Video and Cable Television Service Rules, Subpart D (Carriage of Television Broadcast Signals), 47 CFR 76.51–76.70. If an MVDDS licensee meets the statutory definition of Multiple Video Programming Distributor (MVPD), the retransmission consent requirement of section 325(b)(1) of the Communications Act of 1934, as amended (47 U.S.C. 325(b)(1)) shall apply to that MVDDS licensee. Any MVDDS licensee that is an MVPD must obtain the prior express authority of a broadcast station before retransmitting that station's signal, subject to the exceptions contained in section 325(b)(2) of the Communications Act of 1934, as amended (47 U.S.C. 325(b)(2)). Network nonduplication, syndicated exclusivity, sports blackout, and leased access rules shall not be imposed on MVDDS licensees.

§ 101.1405 Channeling plan.

Each license shall have one spectrum block of 500 megahertz per geographic area that can be divided into any size channels. Disaggregation is not allowed.

§ 101.1407 Permissible operations for MVDDS.

MVDDS licensees must use spectrum in the 12.2–12.7 GHz band for any digital fixed non-broadcast service (broadcast services are intended for reception of the general public and not on a subscribership basis) including one-way direct-to-home/office wireless service. Mobile and aeronautical services are not authorized. Two-way services may be provided by using other spectrum or media for the return or upstream path.

§ 101.1409 Treatment of incumbent licensees.

Terrestrial private operational fixed point-to-point licensees in the 12.2–12.7 GHz band which were licensed prior to MVDDS or NGSO FSS satellite stations are incumbent point-to-point stations and are not entitled to protection from harmful interference caused by later MVDDS or NGSO FSS entrants in the 12.2–12.7 GHz band, except for public safety stations which must be protected. MVDDS and NGSO FSS operators have the responsibility of resolving any harmful interference problems that their operations may cause to these public safety incumbent point-to-point operations in the 12.2–12.7 GHz band. Incumbent public safety terrestrial point-to-point licensees may only make minor changes to their stations without losing this protection. This does not relieve current point-to-point licensees of their obligation to protect BSS operations in the subject frequency band. All point-to-point applications, including low-power operations, for new licenses, major amendments to pending applications, or major modifications to existing licenses for the 12.2–12.7 GHz band are no longer accepted except for renewals and changes in ownership. See § 1.929 of this chapter for definitions of major and minor changes.

§ 101.1411 Regulatory status and eligibility.

(a) MVDDS licensees are permitted to provide one-way video programming and data services on a non-common carrier and/or on a common carrier basis. MVDDS is not required to be treated as a common carrier service unless it is providing non-Internet voice and data services through the public switched network.

(b) MVDDS licensees in the 12.2–12.7 GHz band are subject to the requirements set forth in § 101.7.

(c) Any entity, other than one precluded by §§ 101.7 and 101.1412, is eligible for authorization to provide MVDDS under this part. Authorization will be granted upon proper application filing in accordance with the Commission's rules.

§ 101.1412 MVDDS eligibility restrictions for cable operators.

(a) Eligibility for MVDDS license. No cable operator, nor any entity owning an attributable interest in a cable operator, shall have an attributable interest in an MVDDS license if such cable operator's service area significantly overlaps the MVDDS license area, as "significantly overlaps" is defined in paragraph (e) of this section.

(b) Definition of cable operator. For the purposes of paragraph (a) of this section, the term "cable operator" means a company that is franchised to provide cable service, as defined in 47 CFR 76.5(ff) of this chapter, in all or part of the MVDDS license area.

(c) For the purpose of this section, the term "MVPD household" refers to a household that subscribes to one or more Multichannel Video Program Distributors (MVPDs), as defined in 47 CFR 76.1000(e) of this chapter.

(d) Waiver of restriction. Upon completion of the initial award of an MVDDS license, a cable operator may petition for a waiver of the restriction on eligibility based upon a showing that changed circumstances or new evidence indicate that no significant likelihood of substantial competitive harm will result from the operator retaining an attributable interest in the MVDDS license.

(e) Significant overlap with service area. For purposes of paragraph (a) of this section, significant overlap occurs when a cable operator's subscribers in the MVDDS license area make up thirty-five percent or more of the MVPD households in that MVDDS license area.

(f) Definition of attributable interest. For purposes of paragraph (a) of this section, an entity shall be considered to have an attributable interest in a cable

operator or MVDDS licensee pursuant to the following criteria:

(1) A controlling interest shall constitute an attributable interest. Controlling interest means majority voting equity ownership, any general partnership interest, or any means of actual working control (including negative control) over the operation of the entity, in whatever manner exercised.

(2) Any general partnership interest in a partnership;

(3) Partnership and similar ownership interests (including limited partnership interests) amounting to 20 percent or more of the total partnership interests, calculated according to both the percentage of equity paid in and the percentage of distribution of profits and losses;

(4) Any stock interest amounting to 20 percent or more of the outstanding voting stock of an entity;

(5) Any voting or non-voting stock interest, amounting to 20 percent or more of the total outstanding stock of an entity;

(6) Stock interests held in trust that exceed the limit set forth in paragraph (f) of this section shall constitute an attributable interest of any person who holds or shares the power to vote such stock, of any person who has the sole power to sell such stock, and, in the case of stock held in trust, of any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal, or extra-trust business relationship to the grantor or the beneficiary, the stock interests held in trust shall constitute an attributable interest of such grantor or beneficiary, as appropriate.

Note to paragraph (f)(6): Waivers may be granted upon an affirmative showing: That the interest holder has less than a fifty percent voting interest in the licensee and there is an unaffiliated single holder of a fifty percent or greater voting interest; that the interest holder is not likely to affect the local market in an anticompetitive manner; that the interest holder is not involved in the operations of the licensee and does not have the ability to influence the licensee on a regular basis; and that grant of a waiver is in the public interest because the benefits to the public of common ownership outweigh any potential anticompetitive harm to the market.

(7) Debt and interests such as warrants and convertible debentures, options, or other interests (except non-voting stock) with rights of conversion to voting interests shall not constitute attributable interests unless and until conversion is effected.

(8) An interest in a Limited Liability Company (LLC) or Registered Limited Liability Partnership (RLLP) amounting to 20 percent or more, shall constitute an attributable interest of each such limited partner.

(9) Officers and directors of a cable operator, an MVDDS licensee, or an entity that controls such cable operator or MVDDS licensee, shall be considered to have an attributable interest in such cable operator or MVDDS licensee.

(10) Ownership interests that are held indirectly by any party through one or more intervening corporations or other entities shall be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that, if the ownership for any interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest.

(11) Any person who manages the operations of a cable operator or an MVDDS licensee pursuant to a management agreement shall be considered to have an attributable interest in such cable operator or MVDDS licensee, if such person or its affiliate has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence:

(i) The nature or types of services offered by such entity;

(ii) The terms upon which such services are offered; or

(iii) The prices charged for such services.

(12) Any person or its affiliate who enters into a joint marketing arrangement with a cable operator, an MVDDS licensee, or an affiliate of such entity, shall be considered to have an attributable interest in such cable operator, MVDDS licensee, or affiliate, if such person or its affiliate has authority to make decisions or otherwise engage in practices or activities that determine:

(i) The nature or types of services offered by such entity;

(ii) The terms upon which such services are offered; or

(iii) The prices charged for such services.

(g) *Divestiture.* Any cable operator, or any entity owning an attributable interest in a cable operator, that would otherwise be barred from acquiring an attributable interest in an MVDDS license by the eligibility restriction in paragraph (a) of this section, may be a party to an MVDDS application (*i.e.*, have an attributable interest in the applicant), and such applicant will be eligible for an MVDDS license, pursuant to the divestiture procedures set forth in paragraphs (g)(1) through (g)(6) of this section.

(1) Divestiture shall be limited to the following prescribed means:

(i) An MVDDS applicant holding an attributable interest in a cable operator may divest such interest in the cable company.

(ii) Other MVDDS applicants disqualified under paragraph (a) of this section, will be permitted to:

(A) Partition and divest that portion of the existing service area that causes it to exceed the overlap restriction in paragraph (a) of this section, subject to applicable regulations of state and local governments; or

(B) Partition and divest that portion of the MVDDS geographic service area that exceeds the overlap restriction in paragraph (a) of this section.

(iii) Divestiture may be to an interim trustee if a buyer has not been secured in the required period of time, as long as the MVDDS applicant has no interest in or control of the trustee and the trustee may dispose of the license as it sees fit.

(2) The MVDDS applicant shall certify as an exhibit to its short form application that it and all parties to the application will come into compliance with paragraph (a) of this section.

(3) If such MVDDS applicant is a successful bidder in an auction, it must submit with its long-form application a signed statement describing its efforts to date and future plans to come into compliance with the eligibility restrictions in paragraph (a) of this section.

(4) If such an MVDDS applicant is otherwise qualified, its application will be granted subject to a condition that the applicant shall come into compliance with the eligibility restrictions in paragraph (a) within ninety (90) days of final grant of such MVDDS license.

(5) An MVDDS applicant will be considered to have come into compliance with paragraph (a) of this section if:

(i) In the case of the divestiture of a portion of an MVDDS license service area, it has successfully completed the assignment or transfer of control of the requisite portion of the MVDDS geographic service area.

(ii) In all other cases, it has submitted to the Commission a signed certification that it has come into compliance with paragraph (a) of this section by the following means, identified in such certification:

(A) By divestiture of a disqualifying interest in a cable operator, identified in terms of the interest owned, the owner of such interest (and, if such owner is

not the applicant itself, the relationship of the owner to the applicant), the name of the party to whom such interest has been divested, and the date such divestiture was executed; or

(B) By divestiture of the requisite portion of the cable operator's existing service area, identified in terms of the name of the party to whom such interest has been divested, the date such divestiture was executed, the name of any regulatory agency that must approve such divestiture, and the date on which an application was filed for this purpose with the regulatory agency.

(6) If no such certification or application is tendered to the Commission within ninety (90) days of final grant of the initial license, the Commission may cancel or rescind the license automatically, shall retain all monies paid to the Commission, and, based on the facts presented, shall take any other action it may deem appropriate.

§ 101.1413 License term and renewal expectancy.

(a) The MVDDS license term is ten years, beginning on the date of the initial authorization grant.

(b) Application of a renewal expectancy is based on a showing of substantial service at the end of five years into the license period and ten years into the license period. The substantial service requirement is defined as a service that is sound, favorable, and substantially above a level of mediocre service which might minimally warrant renewal. At the end of five years into the license term and ten years into the license period, the Commission will consider factors such as:

(1) Whether the licensee's operations service niche markets or focus on serving populations outside of areas serviced by other MVDDS licensees;

(2) Whether the licensee's operations serve populations with limited access to telecommunications services; and

(3) A demonstration of service to a significant portion of the population or land area of the licensed area.

(c) The renewal application of an MVDDS licensee must include the following showings in order to claim a renewal expectancy:

(1) A coverage map depicting the served and unserved areas;

(2) A corresponding description of current service in terms of geographic coverage and population served or transmitter locations in the served areas; and

(3) Copies of any Commission Orders finding the licensee to have violated the Communications Act or any Commission rule or policy and a list of any pending proceedings that relate to any matter described by the requirements for the renewal expectancy.

§ 101.1415 Partitioning and disaggregation.

(a) MVDDS licensees are permitted to partition licensed geographic areas along county borders (Parishes in Louisiana or Territories in Alaska). Disaggregation will not be permitted by MVDDS licensees in the 12.2–12.7 GHz band. "Partitioning" is the assignment of geographic portions of a license along geopolitical or other boundaries. "Disaggregation" is the assignment of discrete portions or "blocks" of spectrum licensed to a geographic licensee or qualifying entity.

(b) *Eligibility.* (1) Parties seeking approval for partitioning shall request from the Commission an authorization for partial assignment of a license pursuant to § 1.948 of this chapter.

(2) MVDDS licensees may apply to the Commission to partition their licensed geographic service areas to eligible entities and are free to partition their licensed spectrum at any time following the grant of a license.

(3) Any existing frequency coordination agreements shall convey with the assignment of the geographic area or spectrum, and shall remain in effect for the term of the agreement unless new agreements are reached.

(c) *Technical standards.* (1) Partitioning. In the case of partitioning, applicants and licensees must file FCC Form 603 pursuant to § 1.948 of this chapter and list the partitioned service area on a schedule to the application.

(2) The geographic coordinates must be specified in degrees, minutes, and seconds to the nearest second of latitude and longitude and must be based upon the 1983 North American Datum (NAD83).

(d) *Unjust enrichment.* 12 GHz licensees that received a bidding credit and partition their licenses to entities not meeting the eligibility standards for such a bidding credit, will be subject to the provisions concerning unjust enrichment as set forth in § 1.2111 of this chapter.

(e) *License term.* The MVDDS license term is ten years, beginning on the date of the initial authorization grant. The license term for a partitioned license area shall be the remainder of the original licensee's license term as provided for in § 101.1413.

(f) *Construction requirements.* Applications requesting approval for partitioning must include a certification by each party stating that one or both parties will satisfy the construction requirement set forth in § 101.1413. Failure by a party to meet its respective construction requirement will result in the automatic cancellation of its license without further Commission action.

§ 101.1417 Annual report.

Each MVDDS licensee shall file with the Broadband Division of the Wireless Telecommunications Bureau of the Commission two copies of a report by March 1 of each year for the preceding calendar year. This report must include the following:

(a) Name and address of licensee;

(b) Station(s) call letters and primary geographic service area(s); and

(c) The following statistical information for the licensee's station (and each channel thereof):

(1) The total number of separate subscribers served during the calendar year;

(2) The total hours of transmission service rendered during the calendar year to all subscribers;

(3) The total hours of transmission service rendered during the calendar year involving the transmission of local broadcast signals; and

(4) A list of each period of time during the calendar year in which the station rendered no service as authorized, if the time period was a consecutive period longer than 48 hours.

§ 101.1421 Coordination of adjacent area MVDDS stations.

(a) MVDDS licensees in the 12.2–12.7 GHz band are required to develop sharing and protection agreements based on the design and architecture of their systems, in order to ensure that no harmful interference occurs between adjacent geographical area licensees. MVDDS licensees shall:

(1) Engineer systems to be reasonably compatible with adjacent and co-channel operations in the adjacent areas on all its frequencies; and

(2) Cooperate fully and in good faith to resolve interference and transmission problems that are present on adjacent and co-channel operations in adjacent areas.

(b) Harmful interference to public safety stations, co-channel MVDDS stations operating in adjacent geographic areas, and stations operating on adjacent channels to MVDDS stations is prohibited. In areas where the DMAs are in close proximity, careful consideration should be given to power requirements and to the location, height, and radiation pattern of the transmitting and receiving antennas. Licensees are expected to cooperate fully in attempting to resolve problems of

potential interference before bringing the matter to the attention of the Commission.

(c) Licensees shall coordinate their facilities whenever the facilities have optical line-of-sight into other licensees' areas or are within the same geographic area. Licensees are encouraged to develop operational agreements with relevant licensees in the adjacent geographic areas. Incumbent public safety POFS licensee(s) shall retain exclusive rights to its channel(s) within the relevant geographical areas and must be protected in accordance with the procedures in § 101.103. A list of public safety incumbents is attached as Appendix I to the Memorandum Opinion and Order and Second Report and Order, Docket 98–206, released May 23, 2002. Please check with the Commission for any updates to that list.

§ 101.1423 Canadian and Mexican coordination.

Pursuant to § 2.301 of this chapter, MVDDS systems in the United States within 56 km (35 miles) of the Canadian and Mexican border will be granted conditional licenses, until final international agreements are approved. These systems may not cause harmful interference to stations in Canada or Mexico. MVDDS stations must comply with the procedures outlined under § 101.147(p) and § 1.928(f)(1) and (f)(2) of this chapter until final international agreements concerning MVDDS are signed. Section 1.928(f) of this chapter states that transmitting antennas can be located as close as five miles (eight kilometers) of the border if they point within a sector of 160 degrees away from the border, and as close as thirty-five miles (fifty-six km) of the border if they point within a sector of 200 degrees toward the border without coordination with Canada. MVDDS licensees shall apply this method near the Canadian and Mexican borders. No stations are allowed within 5 miles of the borders.

§ 101.1425 RF safety.

MVDDS stations in the 12.2–12.7 GHz frequency band do not operate with output powers that equal or exceed 1640 watts EIRP and therefore will not be subject to the routine environmental evaluation rules for radiation hazards, as set forth in § 1.1307 of this chapter.

§ 101.1427 MVDDS licenses subject to competitive bidding.

Mutually exclusive initial applications for MVDDS licenses in the 12.2–12.7 GHz band are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

§ 101.1429 Designated entities.

(a) *Eligibility for small business provisions.* (1) A very small business is an entity that, together with its controlling interests and affiliates, has average annual gross revenues not exceeding $3 million for the preceding three years.

(2) A small business is an entity that, together with its controlling interests and affiliates, has average annual gross revenues not exceeding $15 million for the preceding three years.

(3) An entrepreneur is an entity that, together with its controlling interests and affiliates, has average annual gross revenues not exceeding $40 million for the preceding three years.

(b) *Bidding credits.* A winning bidder that qualifies as a very small business, as defined in this section, or a consortium of very small businesses may use the bidding credit specified in § 1.2110(f)(2)(i) of this chapter. A winning bidder that qualifies as a small business, as defined in this section, or a consortium of small businesses may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as an entrepreneur, as defined in this section, or a consortium of entrepreneurs may use the bidding credit specified in § 1.2110(f)(2)(iii) of this chapter.

§ 101.1440 MVDDS protection of DBS.

(a) An MVDDS licensee shall not begin operation unless it can ensure that the EPFD from its transmitting antenna at all DBS customers of record locations is below the values listed for the appropriate region in § 101.105(a)(4)(ii). Alternatively, MVDDS licensees may obtain a signed written agreement from DBS customers of record stating that they are aware of and agree to their DBS system receiving MVDDS signal levels in excess of the appropriate EPFD limits specified in § 101.105(a)(4)(ii). DBS customers of record are those who had their DBS receive antennas installed prior to or within the 30 day period after notification to the DBS operator by the MVDDS licensee of the proposed MVDDS transmitting antenna site.

(b) MVDDS licensees are required to conduct a survey of the area around its proposed transmitting antenna site to determine the location of all DBS customers of record that may potentially be affected by the introduction of its MVDDS service. The MVDDS licensee must assess whether the signal levels from its system, under its deployment plans, would exceed the appropriate EPFD levels in § 101.105(a)(4)(ii) at any DBS customer of record location. Using EPFD calculations, terrain and building structure characteristics, and the survey results, an MVDDS licensee must make a determination of whether its signal level(s) will exceed the EPFD limit at any DBS customer of record sites. To assist in making this determination, the MVDDS provider can use the EPFD contour model developed by the Commission and described in Appendix J of the Memorandum Opinion and Order and Second Report and Order, ET Docket 98–206 or on the OET website at *http://www.fcc.gov/oet/dockets/et98-206*.

(c) If the MVDDS licensee determines that its signal level will exceed the EPFD limit at any DBS customer site, it shall take whatever steps are necessary, up to and including finding a new transmit site, to ensure that the EPFD limit will not be exceeded at any DBS customer location.

(d) *Coordination between MVDDS and DBS licensees.* (1) At least 90 days prior to the planned date of MVDDS commencement of operations, the MVDDS licensee shall provide the following information to the DBS licensee(s):

(i) Geographic location (including NAD 83 coordinates) of its proposed station location;

(ii) Maximum EIRP of each transmitting antenna system;

(iii) Height above ground level for each transmitting antenna;

(iv) Antenna type along with main beam azimuth and altitude orientation information, and description of the antenna radiation pattern;

(v) Description of the proposed service area; and

(vi) Survey results along with a technical description of how it determined compliance with the appropriate EPFD level at all DBS subscriber locations.

(2) No later than forty-five days after receipt of the MVDDS system information in paragraph (d)(1) of this section, the DBS licensee(s) shall provide the MVDDS licensee with a list of only those new DBS customer locations that have been installed in the 30-day period following the MVDDS notification and that the DBS licensee believes may receive harmful interference or where the prescribed EPFD limits may be exceeded. In addition, the DBS licensee(s) could indicate agreement with the MVDDS licensee's technical assessment, or identify DBS customer locations that the MVDDS licensee failed to consider or DBS customer locations where they believe the MVDDS licensee erred in its

analysis and could exceed the prescribed EPFD limit.

(3) Prior to commencement of operation, the MVDDS licensee must take into account any new DBS customers or other relevant information provided by DBS licensees in response to the notification in paragraph (d)(1) of this section.

(e) Beginning thirty days after the DBS licensees are notified of a potential MVDDS site in paragraph (d)(1) of this section, the DBS licensees are responsible for providing information they deem necessary for those entities who install all future DBS receive antennas on its system to take into account the presence of MVDDS operations so that these DBS receive antennas can be located in such a way as to avoid the MVDDS signal. These later installed DBS receive antennas shall have no further rights of complaint against the notified MVDDS transmitting antenna(s).

(f) In the event of either an increase in the EPFD contour in any direction or a major modification as defined in § 1.929 of this chapter, such as the addition of an antenna, to an MVDDS station, the procedures of paragraphs (d) and (e) of this section and rights of complaint begin anew. Exceptions to this are renewal, transfer of control, and assignment of license applications.

(g) *Interference complaints.* The MVDDS licensee must satisfy all complaints of interference to DBS customers of record which are received during a one year period after commencement of operation of the transmitting facility. Specifically, the MVDDS licensee must correct interference caused to a DBS customer of record or cease operation if it is demonstrated that the DBS customer is receiving harmful interference from the MVDDS system or that the MVDDS signal exceeds the permitted EPFD level at the DBS customer location.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket 980702167–4150–03; I.D. 031901A]

RIN 0648–AK26

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Groundfish Observer Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final rule; request for comments.

SUMMARY: NMFS is publishing this interim final rule to amend the regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP) to provide for a mandatory, vessel-financed observer program on at-sea processing vessels.

This action is necessary to satisfy the standardized bycatch reporting methodology requirements of the 1996 Sustainable Fisheries Act amendments to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective July 7, 2004, except for § 660 360(f)(3)(iv) which is effective 60 days after the date of publication in the **Federal Register** of a notice announcing approval of the Paperwork Reduction Act clearance request for this information collection.

Comments are due by July 7, 2004.

ADDRESSES: You may submit comments, identified by (docket number and or RIN number), by any of the following methods:

- E-mail: *WhitingObservers.nwr@noaa.gov.* Include (docket number and/or RIN number) in the subject line of the message.
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Fax: 206–526–6736
- Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070, Attn: Becky Renko.

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this interim final rule may be submitted to Becky Renko, NMFS, Northwest Region, and to David Rostker, Office of Management and Budget (OMB), by e-mail at David_Rostker@omb.gov, or fax to 202–395–7285.

Copies of the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (IRFA) may be obtained from the Pacific Fishery Management Council (Council) by writing to the Council at 7700 NE Ambassador Place, Portland, OR 97220, or by contacting Don McIsaac at 503–326–6352. Copies may also be obtained from William L. Robinson, Northwest Region, NMFS, 7600 Sand Point Way N.E., BIN C15700, Bldg. 1, Seattle, WA 98115–0070.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, Northwest Region, NMFS, telephone: 206–526–6140; fax: 206–526–6736; and e-mail: *bill.robinson@noaa.gov* or Svein Fougner, Southwest Region, NMFS, telephone: 562–980–4000; fax: 562–980–4047; and e-mail: *svein.fougner@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This rule is also accessible via the Internet at the Office of the Federal Register's website at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

A proposed rule was published on September 10, 2003 (68 FR 53334), and public comment was requested through October 10, 2003. During the comment period, NMFS received one letter. The comments and responses are presented later in the preamble to this interim final rule. See the preamble to the proposed rule for additional information on the affected fishery and this rule.

NMFS believes it is necessary to implement a mandatory observer program for the at-sea processing sector before the start of the 2004 whiting fishery. However, new standards for how vessel-funded observer services may be paid have been established by NMFS. These new standards have resulted in this rule being published as an interim final rule rather than a final rule. As described later in the preamble, NMFS intends to publish a proposed and final rule before the start of the 2005 whiting season to modify the program slightly from what is being defined by this interim final rule.

Background

The Federal groundfish fishery off the Washington, Oregon, and California (WOC) coasts is managed pursuant to the Magnuson-Stevens Act and the Pacific Coast Groundfish FMP. The FMP

was developed by the Council. Regulations implementing the FMP appear at 50 CFR part 660 subpart G.

The Magnuson-Stevens Act at 16 U.S.C. 1853(a)(11) requires each FMP to establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery. Further, at 16 U.S.C. 1853(b)(8), the Magnuson-Stevens Act provides that an FMP may require that one or more observers be carried aboard a U.S. vessel engaged in fishing for species that are subject to an FMP, for the purpose of collecting data necessary for the conservation and management of the fishery.

Placement of fishery observers on vessels at sea is acknowledged as an important method for collecting fisheries data. Therefore, the Pacific Coast Groundfish FMP provides that all catcher-processors and at-sea processing vessels operating in the groundfish fishery may be required to accommodate on board observers for purposes of collecting scientific data. Amendment 13 to the FMP also provides that vessels may be required to pay for observers. Under the Magnuson-Stevens Act at 16 U.S.C. 1855(d), the Secretary of Commerce, acting through NMFS, has general responsibility to carry out any fishery management plan and may promulgate such regulations as may be necessary to carry out this responsibility.

The current regulations requiring observers in the Pacific Coast groundfish fishery (50 CFR 660.360) apply to catcher vessels, but not to processing vessels. NMFS is publishing this interim final rule to amend the regulations implementing the FMP to provide for a mandatory, vessel-financed observer program on at-sea processing vessels. This action would require processing vessels to pay for and carry either one or two (depending on vessel length) NMFS-certified observers obtained from a third-party NMFS-permitted observer provider company while participating in the Pacific Coast groundfish fishery. The action also specifies certification and decertification requirements for observers, and defines the responsibilities of observers and processing vessels.

So far, the only processing vessels participating in the groundfish fishery are large catcher-processors and motherships that target Pacific whiting. The WOC at-sea Pacific whiting fishery is a mid-water trawl fishery that is currently composed of large catcher-processor and mothership vessels. The catcher-processors harvest and process catch while the motherships rely on smaller catcher vessels to deliver unsorted catch for processing.

These large processing vessels primarily operate in the Alaskan pollock fisheries, but move south to the WOC to fish for whiting between pollock seasons. While they participate in the pollock fishery, they are subject to 50 CFR part 679, which specifies requirements related to observer services for the North Pacific (Alaskan) Groundfish fisheries. Under the Alaska observer program, vessels are required to carry and pay for NMFS-certified observers that are provided by third-party observer provider companies operating under permits administered by the NMFS Alaska Region. The Alaska program contains qualification and performance standards both for observers and observer provider companies, and also contains processes for sanctioning observer provider company permits, as well as certifying and decertifying observers.

It is anticipated that some smaller vessels may enter the at-sea processing sector of the Pacific whiting fishery in the near future. Severe harvest constraints for the non-whiting Pacific Coast groundfish fishery are expected to motivate catcher vessel operators to seek new opportunities. At-sea processing of Pacific whiting may represent one such opportunity. As processing vessels, they would not be required to carry observers under WOC observer requirements at 50 CFR 660.360, unless this rule is adopted.

Since 1991, the large at-sea whiting processing vessels have each voluntarily carried at least one NMFS-trained observer to provide data for estimating total landed catch and discards; monitor the attainment of annual groundfish allocations; estimate catch rates of prohibited species; and to assess stock conditions. NMFS depends on these methods to manage the fishery.

In recent years, observer data has also become increasingly important for monitoring incidental catch of overfished species and Endangered Species Act (ESA) listed salmonids. Several overfished species are taken as bycatch in the Pacific whiting fishery. Pacific whiting itself was declared overfished in 2002.

For the most part, the at-sea whiting fishery has been monitored adequately under the voluntary program. However, there is concern about the lack of data that would be available if at-sea processing vessels no longer voluntarily carried observers. To assure the integrity and availability of observer data in the future, NMFS is establishing a mandatory observer program and mandatory observer coverage levels for all at-sea processing vessels in the Pacific Coast groundfish fishery.

Observers are a uniformly trained group of technicians whose objective is gathering fisheries data. Observers are stationed aboard vessels to gather independent data about the fish that are taken, harvested, received or processed by the vessel. Standardized sampling procedures, defined by NMFS, are intended to provide reliable data for fleetwide monitoring of the fishery. The primary duties of an observer include: estimating catch weights, determining catch composition, collecting length and weight measurements, and determining sex distribution.

This rule defines certification requirements and prohibited behaviors that will ensure that observers are qualified, and understand their responsibilities and duties. Establishing a suspension/decertification process will allow NMFS to deal with observer performance or behavioral issues while providing observers an opportunity to file an administrative appeal, should they be recommended for decertification, prior to a final determination on their certification status.

Under these regulations, owners and operators of fishing vessels that carry observers must comply with specific requirements in order to ensure that their vessels are adequate and safe for the purposes of carrying an observer. In addition to the national regulations, existing regulations specific to the treatment and well-being of Pacific coast groundfish observers at 50 CFR 660.360 will also apply to observers on board at-sea processing vessels.

This rule includes requirements for each at-sea processing vessel over 125 ft (38.1 m) in length to carry two observers while participating in the fishery. Having two observers allows all or almost all hauls to be sampled. This rule will also require at-sea processing vessels less than 125 ft (38.1 m) in length to carry and pay for one observer, should they choose to enter the processing sector of the fishery.

Because the large processing vessels process whiting twenty four hours per day, seven days a week, a single observer typically samples less than half of all hauls taken by an individual vessel. Requiring large processing vessels to carry two observers, and smaller vessels to carry one observer, is expected to improve the accuracy of catch projections and reduce the likelihood of overestimating or underestimating the harvested amounts of target and incidentally caught species. Data inaccuracies could affect the long-term biological stability and

yield of whiting or incidentally caught species. The ESA terms and conditions for incidental take of chinook salmon in the whiting fishery are also more likely to be met.

Under this interim final rule, at-sea processing vessels will be required to obtain their observers from third-party observer provider companies that are subject to the Alaskan regulations at 50 CFR 679.50. These are comprehensive regulations that provide for permitting and permit sanctions against the observer provider companies. These provisions are not duplicated in the WOC regulations, and the observer provider companies will continue to be regulated under the Alaska regulations by the NMFS Alaska Region. Therefore, this rule refers to the Alaskan requirements for observer providers, but does not repeat them in the WOC regulations.

Revised Standards for Vessel-Financed Observer Programs

In May 2000, an independent review of the North Pacific Groundfish Observer Program examined the relationship between NMFS and certified observer providers. This review found that Alaskan contractor certification and decertification regulations leave observers and observer contracting companies vulnerable to pressures that jeopardize the quality and credibility of data. A separate document titled the 2000 Management and Control Review of Observer Programs, addressed similar issues such as the perception of conflict of interest and data confidentiality. The competitive environment to supply observer services at the lowest costs has led to low observer renumeration, low observer morale and high observer turnover rates. Contractual relationships, including "no-cost" Federal contracts, are more likely to provide NMFS with the authority to hold contracting companies accountable for their performance. A federal contract allows service expectations to be defined for the observer provider. If service expectations are not met, NMFS may take remedial action, including termination of the agreement if necessary. In addition, a contract can be modified as necessary in a relatively short time period. The viability of such approaches have been evaluated and therefore, NMFS is discouraging the use of direct pay structure (where vessels pay the third-party observer providers directly for services) for observer services in new observer programs.

This interim final rule is a temporary action. Because NMFS has established standards for new programs and discourages the use of direct pay structure for observer services the contents of this interim final rule will be changed through another proposed and final rulemaking. NMFS intends to publish a proposed and final rule before the start of the 2005 whiting season to modify the program slightly from what is being defined by this interim final rule. It is anticipated that the following sections which are being implemented by this action will be modified: section 50 CFR 660.303 (e) *Procurement of observer services* will require vessels to procure observer services from companies that have negotiated contractual agreements with NMFS; and 50 CFR 660.303 f) *Observer certification and responsibilities* will be removed from regulation and a similar set of qualifications, code of conduct, and performance requirements would be included in the service contract.

Comments and Responses

One letter of comment was received from a private party. The letter contained numerous comments which are summarized and answered below.

Comment 1: Observers should be independent and environmentally connected for the program to be credible.

Response: NMFS believes that the qualification criteria specified in this regulation are adequate to ensure that the observers have the necessary skills, experience and independence to perform the required job duties.

Comment 2: The observer's well being must be protected.

Response: Provisions within this rule are specifically intended to ensure observer safety and safeguard their well being.

Comment 3: There should be enforcement agents working undercover on these ships and video cameras should be required.

Response: NMFS maintains a separate, trained enforcement division that employs enforcement methods as necessary to document suspected violations. In appropriate cases these methods may include use of undercover agents and electronic technology.

Comment 4: The regulatory text should not contain the word "may" because that implies that the regulatory requirements are not mandatory.

Response: The word "may" appears ten times in the regulatory text for this action. The word may has either been used to indicate that the observer or NMFS has a choice, or the word "may" has been used within the phrase "may not" to indicate the lack of choice by the observer. NMFS has determined that the word "may" has been used correctly throughout this document.

Comment 5: The preamble text is incorrect in stating that small processing vessels may enter the at-sea processing sector. They either do or they don't enter, if they do then regulations should be in place to prevent them from overfishing.

Response: At this time there are no small (less than 125 ft (38.1 m)) vessels in the at-sea processing sector of the Pacific Coast groundfish fishery. However, under existing regulations such vessels could choose to enter the fishery. If, at a future date, a small processing vessel begins to process Pacific coast groundfish the regulations implemented by this rule would require them to carry an observer. Data provided by the observers will be used to estimate total catch in relation to the harvest specifications that are established during the harvest specification and management process. Overfished species rebuilding plans and harvest specifications and management measures necessary to prevent overfishing will be adopted through other rulemakings.

Comment 6: A voluntary program is inadequate in fisheries where overfishing occurs.

Response: To maintain a source of information for managing the Pacific coast groundfish resources, NMFS agrees that a mandatory observer program is necessary for at-sea processing vessels. The purpose of this action is to move from a voluntary observer program to a mandatory observer program with specified coverage levels.

Comment 7: This action is being taken to avoid the Court order.

Response: NMFS assumes that the commenter is referring to an April 12, 2002, order in which a Federal magistrate concluded in *Pacific Marine Conservation Council*, Inc. v. *Evans*, 200 F. Supp.2d 1194 (N.D. Calif. 2002), that the Pacific Coast Groundfish FMP fails to establish a legally adequate bycatch reporting methodology because it fails to establish either a mandatory or adequate observer program. By establishing mandatory observer requirements for the at-sea processing sector of the groundfish fishery, the rule complies with the Court's ruling.

Comment 8: The rule has no provisions to insure that observers will not be "paid under the table" or lie about fishing production, nor does the rule contain training requirements to keep the observer honest. Observers should be checked by undercover officers and fined at least $50,000 with

possible jail time of at least one year if they are caught lying.

Response: This rule establishes standards of behavior for observers. These standards include the requirement to accurately record sample data and report any observations such as suspected violations. This rule also implements observer decertification procedures.

Comment 9: From the preamble language in the proposed rule which states "poor quality data may have a strong influence on fleetwide estimates of total catch by species," it appears that NMFS has been working with poor quality data in the at-sea processing sector. By continuing this program NMFS is taking no steps to improve the quality of data obtained from at-sea processing vessels.

Response: The background information in the preamble that the commenter is referring to is in reference to the potential impacts under status quo if less than 100 percent of the processing vessels carry observers or if the data collected by observers is not provided to NMFS. The commenter is incorrect in assuming that the preamble text suggests that NMFS has been using poor quality data from the at-sea processing sector or that data obtained from the existing observer program is of poor quality or inadequate to meet management needs.

Classification

This rule is being published as an interim final rule. NMFS expects to publish a final rule in time for the 2005 fishing season.

NMFS prepared a final regulatory flexibility analysis (FRFA) that describes the economic impact this interim final rule will have on small entities. A description of the action, including why it is being considered and the legal basis for this action, are contained in the preamble. The FRFA is available from NMFS (see **ADDRESSES**) and a summary of the initial regulatory flexibility analysis (IRFA)follows:

During the comment period for the proposed rule, NMFS received one letter containing numerous comments. None of these comments addressed the IRFA analysis or economic impacts of the proposed rule on small entities. This interim final rule does not duplicate, overlap, or conflict with other Federal rules.

This action is necessary to satisfy the standardized bycatch reporting methodology requirements of the 1996 Sustainable Fisheries Act amendments to the Magnuson-Stevens Act. Under these requirements, an FMP must adopt a standardized reporting methodology for assessing the amount and kind of bycatch occurring in the fishery. In addition, this action will benefit fisheries conservation and management by providing information needed for enforcing fishery regulations, maintaining safe and adequate working conditions for observers, and establishing certification and performance standards for observers to ensure that quality data are available for managing the fishery.

Three alternative actions that primarily differ in the number of mandatory observers that would be required to be carried were considered and analyzed. The alternatives considered included: Alternative 1, the status quo; Alternative 2, one observer, observer and observer provider certification/decertification procedures, vessel standards, and prohibitions; and Alternative 3 (the preferred alternative) two observers on vessels greater than 125 ft (38.1 m)in length or greater or one observer on vessels less than 125 ft (38.1 m), observer and observer provider certification/decertification procedures, vessel standards, and prohibitions.

Under the status quo alternative, NMFS would continue to administer the program; vessels would voluntarily carry NMFS-trained observers; and businesses that are certified as observer providers for the Federal groundfish fishery off Alaska would pay the direct costs associated with carrying the observers. Alternatives 2 or 3 were similar in that they specified certification and decertification requirements for observers; defined the responsibilities of observers and processing vessels; and required that mandatory NMFS-certified observers be obtained from NMFS-permitted observer provider companies. The difference between Alternatives 2 and 3 was in the number of observers each processing vessels would be required to carry. The regulatory package that has been prepared for this interim final rule is based on Alternative 3 in which each processing vessel would carry one or two NMFS-certified observers, depending on the vessel's length. An alternative with no observer coverage was considered but not analyzed because of biological concerns.

The Council's April 1999 recommendation was to require each processing vessel to carry one observer (Alternative 2). However NMFS preferred alternative, Alternative 3, would require processing vessels equal to or greater than 125 ft (38.1 m) in length to carry two NMFS-certified observers while participating in the groundfish fishery and vessels less than 125 ft (38.1 m) in length would be required to carry one observer. Since 2001, under the status quo alternative (Alternative 1) all processors have carried two observers. To date, no at-sea processors under 125 ft (38.1 m) in length have participated in the fishery.

To the extent possible, the proposed regulations are consistent with existing regulations for observers in the Alaska groundfish fisheries which are found at 50 CFR part 679. This has been done to minimize the burden on industry participants and to maintain a program that is similar to the existing voluntary program.

Approximately seven WOC groundfish catcher-processors and five mothership processors will be affected by this interim final rule. The Small Business Administration guidelines for fishing firms uses a $3,000,000 gross revenue threshold to separate small from large operations. In the application to any one firm, the $3,000,000 threshold considers income to all affiliated operations. NMFS records indicate that the gross annual revenue for each of the catcher-processor and mothership operations operating in the WOC exceeds $3,000,000, therefore, the vessels are not considered small businesses. In 1998 the average catcher-processor and mothership operations gross revenue exceeded $15,000,000.

Between 15 and 20 at-sea catcher vessels participate in the mothership sector of the fishery annually. These companies are all assumed to be small businesses. This rulemaking is not expected to have any direct impacts on catcher vessels and minimal or no direct impact on the business that they conduct with the mothership processors because they fall under the comprehensive observer program. A separate rule published on April 24, 2001 (66 FR 20609), established an observer program for catcher vessels in the groundfish fishery off Washington, Oregon, and California

Projected reporting, recordkeeping and compliance requirements include the process by which an observer could appeal decertification. This is a narrative document that is voluntarily submitted by observers and would not require special skills or training. This interim final rule does not specify recordkeeping requirements for observer providers; however NMFS assumes that information needed for training/briefing registration, monitoring deployment/logistics, scheduling debriefings, and identifying observer harassment, observer safety concerns, or observer performance problems will continue to be voluntarily submitted by observer providers.

This interim final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The estimated time for observers to obtain college transcripts and prepare a disclosure statement regarding criminal convictions is 15 minutes per response. The estimated time for observers to submit documentary evidence or to petition a rejected certification, suspension or decertification decision is 4 hours per response. Although this interim final rule does not contain requirements specific to the observer contracting companies, these companies do submit information to NMFS. The estimated time for this collection is as follows: training/briefing registration lists: 7 minutes per response; notification of physical examinations: 2 minutes per response; time required for physical exam: 2 hours; lists of projected observer assignments: 7 minutes per response; weekly logistics reports: 7 minutes per response; debriefing registration materials: 7 minutes per response; and reports on observer harassment, safety or performance concerns: 2 hours per response. All estimates of annual response time include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. These requirements have been submitted to OMB for approval.

Public comment is sought regarding whether these proposed collections of information are necessary for the proper performance of the functions of the agency and whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including the use of automated collection techniques or other forms of information technology. Send comments on these or other aspects of the collection-of-information to NMFS Northwest Region at the *ADDRESSES* above and e-mail to David Rostker e-mail at *David_Rostker@omb.gov*, or fax to 202–395–7285.

Notwithstanding any other provisions of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB Control Number.

This interim final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS issued Biological Opinions under the ESA on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999 pertaining to the effects of the groundfish fishery on chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south-central California, northern California, southern California). During the 2000 Pacific whiting season, the whiting fisheries exceeded the chinook bycatch amount specified in the Pacific whiting fishery Biological Opinion's (whiting BO) (December 15, 1999) incidental take statement estimate of 11,000 fish, by approximately 500 fish. In the 2001 whiting season, however, the whiting fishery's chinook bycatch was about 7,000 fish, which approximates the long-term average. After reviewing data from, and management of, the 2000 and 2001 whiting fisheries (including industry bycatch minimization measures), the status of the affected listed chinook, environmental baseline information, and the incidental take statement from the 1999 whiting BO, NMFS determined in a letter dated April 25, 2002, that a re-initiation of the 1999 whiting BO was not required. NMFS has concluded that implementation of the FMP for the Pacific Coast groundfish fishery is not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat. This action is within the scope of these consultations.

This interim final rule was developed after meaningful consultation and collaboration with the tribal representative on the Council. These representatives agreed with the provisions that apply to tribal vessels. Therefore this action is consistent with the requirements of Executive Order 13175.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: May 28, 2004.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, NMFS amends 50 CFR part 660 as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 660.302, add the following definitions "Direct financial interest," "IAD," and "Observer Program Office," in alphabetical order to read as follows:

§ 660.302 Definitions.

* * * * *

Direct financial interest means any source of income to or capital investment or other interest held by an individual, partnership, or corporation or an individual's spouse, immediate family member or parent that could be influenced by performance or non-performance of observer duties.

* * * * *

IAD means Initial Agency Decision.

* * * * *

Observer Program Office means the Observer Program Office of the Northwest Fishery Science Center, National Marine Fisheries Service, Seattle, Washington.

* * * * *

■ 3. In § 660.303, paragraph (b) is revised to read as follows:

§ 660.303 Reporting and recordkeeping.

* * * * *

(b) Any person who is required to do so by the applicable state law must make and/or file, retain, or make available any and all reports (i.e., logbooks, fish tickets, etc.) of groundfish harvests and landings containing all data, and in the exact manner, required by the applicable state law.

* * * * *

■ 4. In § 660.360, paragraphs (c)(1), (d)(1)(i), (d)(3)(ii), (iii), (d)(9),(e), and (f) are added; paragraphs (g), (h), and (i) are removed; paragraph (j) is redesignated as paragraph (g); and newly redesignated paragraphs (g)(1)(iii) through (vii) are added to read as follows:

§ 660.360 Groundfish observer program.

* * * * *

(c) *Observer coverage requirements*—(1) *At-sea processors.* A catcher-processor or mothership 125 ft (38.1 m) LOA or longer must carry two NMFS-certified observers, and a catcher-processor or mothership shorter than 125 ft (38.1 m) LOA must carry one NMFS-certified observer, each day that the vessel is used to take, retain, receive, land, process, or transport groundfish.

* * * * *

(d) * * *

(1) * * *

(i) *At-sea processors.* Equivalent to those provided for officers, engineers, foremen, deck-bosses or other management level personnel of the vessel.

* * * * *

(3) * * *

(ii) *Functional equipment.* Ensuring that the vessel's communications equipment, used by observers to enter and transmit data, is fully functional and operational.

(iii) *Hardware and software.* At-sea processing vessels must provide hardware and software pursuant to regulations at 50 CFR 679.50(f)(1)(iii)(B)(1) and 50 CFR 679.50(f)(2), as follows:

(A) Providing for use by the observer a personal computer in working condition that contains a full Pentium 120 Mhz or greater capacity processing chip, at least 32 megabytes of RAM, at least 75 megabytes of free hard disk storage, a Windows 9x or NT compatible operating system, an operating mouse, and a 3.5–inch (8.9 cm) floppy disk drive. The associated computer monitor must have a viewable screen size of at least 14.1 inches (35.8 cm) and minimum display settings of 600 x 800 pixels. The computer equipment specified in this paragraph (A) must be connected to a communication device that provides a modem connection to the NMFS host computer and supports one or more of the following protocols: ITU V.22, ITU V.22bis, ITU V.32, ITU V.32bis, or ITU V.34. Processors that use a modem must have at least a 28.8kbs Hayes-compatible modem. The above-specified hardware and software requirements do not apply to processors that do not process groundfish.

(B) *NMFS-supplied software.* Ensuring that each at-sea processing ship that is required to have two observers aboard obtains the data entry software provided by the Regional Administrator for use by the observer.

* * * * *

(9) *At-sea transfers to or from processing vessels.* Processing vessels must:

(i) Ensure that transfers of observers at sea via small boat or raft are carried out during daylight hours, under safe conditions, and with the agreement of observers involved.

(ii) Notify observers at least 3 hours before observers are transferred, such that the observers can collect personal belongings, equipment, and scientific samples.

(iii) Provide a safe pilot ladder and conduct the transfer to ensure the safety of observers during transfers.

(iv) Provide an experienced crew member to assist observers in the small boat or raft in which any transfer is made.

(e) *Procurement of observer services by at-sea processing vessels.* Owners of vessels required to carry observers under paragraph (c)(1) of this section must arrange for observer services from an observer provider permitted by the North Pacific Groundfish Observer Program under 50 CFR 679.50(i), except that:

(1) Vessels are required to procure observer services directly from NMFS when NMFS has determined and given notification that the vessel must carry NMFS staff or an individual authorized by NMFS in lieu of an observer provided by a permitted observer provider.

(2) Vessels are required to procure observer services directly from NMFS and a permitted observer provider when NMFS has determined and given notification that the vessel must carry NMFS staff or individuals authorized by NMFS, in addition to an observer provided by a permitted observer provider.

(f) *Observer certification and responsibilities*—(1) *Observer Certification*—(i) *Applicability.* Observer certification authorizes an individual to fulfill duties as specified in writing by the NMFS Observer Program Office while under the employ of a NMFS-permitted observer provider and according to certification endorsements as designated under paragraph (f)(1)(v) of this section.

(ii) *Observer certification official.* The Regional Administrator will designate a NMFS observer certification official who will make decisions for the Observer Program Office on whether to issue or deny observer certification.

(iii) *Certification requirements.* NMFS will certify individuals who:

(A) Are employed by an observer provider company permitted pursuant to 50 CFR 679.50 at the time of the issuance of the certification;

(B) Have provided, through their observer provider:

(*1*) Information identified by NMFS at 50 CFR 679.50(i)(2) (x)(A)(1)(iii) and (iv); and

(*2*) Information identified by NMFS at 50 CFR 679.50(i)(2)(x)(C) regarding the observer candidate's health and physical fitness for the job;

(C) Meet all education and health standards as specified in 50 CFR 679.50(i)(2)(i)(A) and (1)(2)(x)(C), respectively; and

(D) Have successfully completed NMFS-approved training as prescribed by the Observer Program.

(*1*) Successful completion of training by an observer applicant consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other training requirements established by the Observer Program.

(*2*) If a candidate fails training, he or she will be notified in writing on or before the last day of training. The notification will indicate: the reasons the candidate failed the training; whether the candidate can retake the training, and under what conditions, or whether, the candidate will not be allowed to retake the training. If a determination is made that the candidate may not pursue further training, notification will be in the form of an IAD denying certification, as specified under paragraph (f)(1)(iv)(A) of this section.

(E) Have not been decertified under paragraph (f)(3) of this section, or pursuant to 50 CFR 679.50.

(iv) Agency determinations on observer certification (A) *Denial of a certification.* The NMFS observer certification official will issue a written IAD denying observer certification when the observer certification official determines that a candidate has unresolvable deficiencies in meeting the requirements for certification as specified in paragraph (f)(1)(iii) of this section. The IAD will identify the reasons certification was denied and what requirements were deficient.

(B) *Appeals.* A candidate who receives an IAD that denies his or her certification may appeal pursuant to paragraph (f)(4) of this section. A candidate who appeals the IAD will not be issued an interim observer certification, and will not receive a certification unless the final resolution of that appeal is in the candidate's favor.

(C) *Issuance of an observer certification.* An observer certification will be issued upon determination by the observer certification official that the candidate has successfully met all requirements for certification as specified in paragraph (f)(1)(iii) of this section.

(v) *Endorsements.* The following endorsements must be obtained, in addition to observer certification, in order for an observer to deploy.

(A) *Certification training endorsement.* A certification training endorsement signifies the successful completion of the training course required to obtain observer certification. This endorsement expires when the observer has not been deployed and performed sampling duties as required by the Observer Program Office for a period of time, specified by the Observer Program, after his or her most recent debriefing. The observer can renew the endorsement by successfully completing certification training once more.

(B) *Annual general endorsements.* Each observer must obtain an annual general endorsement to their certification prior to his or her first deployment within any calendar year subsequent to a year in which a certification training endorsement is obtained. To obtain an annual general endorsement, an observer must successfully complete the annual briefing, as specified by the Observer Program. All briefing attendance, performance, and conduct standards required by the Observer Program must be met.

(C) *Deployment endorsements.* Each observer who has completed an initial deployment after certification or annual briefing must receive a deployment endorsement to their certification prior to any subsequent deployments for the remainder of that year. An observer may obtain a deployment endorsement by successfully completing all pre-cruise briefing requirements. The type of briefing the observer must attend and successfully complete will be specified in writing by the Observer Program during the observer's most recent debriefing.

(D) *Pacific whiting fishery endorsements.* A Pacific whiting fishery endorsement is required for purposes of performing observer duties aboard vessels that process groundfish at sea in the Pacific whiting fishery. A Pacific whiting fishery endorsement to an observer's certification may be obtained by meeting the following requirements:

(*1*) Be a prior NMFS-certified observer in the groundfish fisheries off Alaska or the Pacific Coast, unless an individual with this qualification is not available;

(*2*) Receive an evaluation by NMFS for his or her most recent deployment (if any) that indicated that the observer's performance met Observer Program expectations for that deployment;

(*3*) Successfully complete a NMFS-approved observer training and/or whiting briefing as prescribed by the Observer Program; and

(*4*) Comply with all of the other requirements of this section.

(2) *Standards of observer conduct*—(i) Limitations on conflict of interest.

(A) Observers:

(*1*) Must not have a direct financial interest, other than the provision of observer services, in a North Pacific fishery managed pursuant to an FMP for the waters off the coast of Alaska, or in a Pacific Coast fishery managed by either the state or Federal governments in waters off Washington, Oregon, or California, including but not limited to:

(*i*) Any ownership, mortgage holder, or other secured interest in a vessel, shoreside or floating stationary processor facility involved in the catching, taking, harvesting or processing of fish,

(*ii*) Any business involved with selling supplies or services to any vessel, shoreside or floating stationary processing facility; or

(*iii*) Any business involved with purchasing raw or processed products from any vessel, shoreside or floating stationary processing facilities.

(*2*) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who either conducts activities that are regulated by NMFS or has interests that may be substantially affected by the performance or nonperformance of the observers' official duties.

(*3*) May not serve as observers on any vessel or at any shoreside or floating stationary processing facility owned or operated by a person who previously employed the observers.

(*4*) May not solicit or accept employment as a crew member or an employee of a vessel, shoreside processor, or stationary floating processor while employed by an observer provider.

(B) Provisions for remuneration of observers under this section do not constitute a conflict of interest.

(ii) *Standards of behavior.* Observers must avoid any behavior that could adversely affect the confidence of the public in the integrity of the Observer Program or of the government, including but not limited to the following:

(A) Observers must perform their assigned duties as described in the Observer Manual or other written instructions from the Observer Program Office.

(B) Observers must accurately record their sampling data, write complete reports, and report accurately any observations of suspected violations of regulations relevant to conservation of marine resources or their environment.

(C) Observers must not disclose collected data and observations made on board the vessel or in the processing facility to any person except the owner or operator of the observed vessel or processing facility, an authorized officer, or NMFS.

(D) Observers must refrain from engaging in any illegal actions or any other activities that would reflect negatively on their image as professional scientists, on other observers, or on the Observer Program as a whole. This includes, but is not limited to:

(*1*) Violating the drug and alcohol policy established by and available from the Observer Program;

(*2*) Engaging in the use, possession, or distribution of illegal drugs; or

(*3*) Engaging in physical sexual contact with personnel of the vessel or processing facility to which the observer is assigned, or with any vessel or processing plant personnel who may be substantially affected by the performance or non-performance of the observer's official duties.

(3) *Suspension and decertification*—(i) *Suspension and decertification review official.* The Regional Administrator (or a designee) will designate an observer suspension and decertification review official(s), who will have the authority to review observer certifications and issue initial administrative determinations of observer certification suspension and/or decertification.

(ii) *Causes for suspension or decertification.* The suspension/decertification official may initiate suspension or decertification proceedings against an observer:

(A) When it is alleged that the observer has committed any acts or omissions of any of the following:

(*1*) Failed to satisfactorily perform the duties of observers as specified in writing by the NMFS Observer Program; or

(*2*) Failed to abide by the standards of conduct for observers as prescribed under paragraph (f)(2) of this section;

(B) Upon conviction of a crime or upon entry of a civil judgment for:

(*i*) Commission of fraud or other violation in connection with obtaining or attempting to obtain certification, or in performing the duties as specified in writing by the NMFS Observer Program;

(*ii*) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(*iii*) Commission of any other offense indicating a lack of integrity or honesty

that seriously and directly affects the fitness of observers.

(iii) *Issuance of initial administrative determination.* Upon determination that suspension or decertification is warranted under paragraph (f)(3)(ii) of this section, the suspension/decertification official will issue a written IAD to the observer via certified mail at the observer's most current address provided to NMFS. The IAD will identify whether a certification is suspended or revoked and will identify the specific reasons for the action taken. If the IAD issues a suspension for an observer certification, the terms of the suspension will be specified. Suspension or decertification is effective immediately as of the date of issuance, unless the suspension/decertification official notes a compelling reason for maintaining certification for a specified period and under specified conditions.

(iv) Appeals. A certified observer who receives an IAD that suspends or revokes his or her observer certification may appeal pursuant to paragraph (f)(4) of this section.

(4) Appeals. (i) Decisions on appeals of initial administrative decisions denying certification to, or suspending, or decertifying, an observer, will be made by the Regional Administrator (or designated official).

(ii) Appeals decisions shall be in writing and shall state the reasons therefor.

(iii) An appeal must be filed with the Regional Administrator within 30 days of the initial administrative decision denying, suspending, or revoking the observer's certification.

(iv) The appeal must be in writing, and must allege facts or circumstances to show why the certification should be granted, or should not be suspended or revoked, under the criteria in this section.

(v) Absent good cause for further delay, the Regional Administrator (or designated official) will issue a written decision on the appeal within 45 days of receipt of the appeal. The Regional Administrator's decision is the final administrative decision of the Department as of the date of the decision.

(g) * * *

(1) * * *

(iii) *Minimum work space aboard at-sea processing vessels.* The observer must have a working area of 4.5 square meters, including the observer's sampling table, for sampling and storage of fish to be sampled. The observer must be able to stand upright and have a work area at least 0.9 m deep in the area in front of the table and scale.

(iv) *Table aboard at-sea processing vessels.* The observer sampling station must include a table at least 0.6 m deep, 1.2 m wide and 0.9 m high and no more than 1.1 m high. The entire surface area of the table must be available for use by the observer. Any area for the observer sampling scale is in addition to the minimum space requirements for the table. The observer's sampling table must be secured to the floor or wall.

(v) *Diverter board aboard at-sea processing vessels.* The conveyor belt conveying unsorted catch must have a removable board (diverter board) to allow all fish to be diverted from the belt directly into the observer's sampling baskets. The diverter board must be located downstream of the scale used to weigh total catch. At least 1 m of accessible belt space, located downstream of the scale used to weight total catch, must be available for the observer's use when sampling.

(vi) *Other requirement for at-sea processing vessels.* The sampling station must be in a well-drained area that includes floor grating (or other material that prevents slipping), lighting adequate for day or night sampling, and a hose that supplies fresh or sea water to the observer.

(vii) *Observer sampling scale.* The observer sample station must include a NMFS-approved platform scale (pursuant to requirements at 50 CFR 679.28(d)(5)) with a capacity of at least 50 kg located within 1 m of the observer's sampling table. The scale must be mounted so that the weighing surface is no more than 0.7 m above the floor.

* * * * *

[FR Doc. 04–12707 Filed 6–4–04; 8:45 am]
BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 040429134–4135–01; I.D. 052704B]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Actions #2 and #3 - Adjustments of the Commercial Fishery from the U.S.-Canada Border to Cape Falcon, Oregon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Rescission of automatic closures; request for comments.

SUMMARY: NMFS announces that the commercial fishery in the area from the U.S.-Canada Border to Cape Falcon, OR, which was closed on May 5, was modified to reopen May 15 and close at midnight on May 18, 2004, with the provision that no vessel may possess, land, or deliver more than 125 chinook for the entire 4 day open period (Inseason Action #2); and to reopen May 24 through midnight on May 26, 2004, with the provision that no vessel may possess, land, or deliver more than 70 chinook for the entire 3 day open period (Inseason Action #3). These actions were necessary to conform to the 2004 management goals. The intended effect of these actions was to allow the fishery to operate within the seasons and quotas specified in the 2004 annual management measures.

DATES: Inseason Action #2 - Reopening the area from the U.S.-Canada Border to Cape Falcon, OR effective 0001 hours local time (l.t.), May 15, 2004, until 2359 hours l.t., May 18, 2004; and Inseason Action #3 - reopening the area from the U.S.-Canada Border to Cape Falcon, OR effective 0001 hours l.t., May 24, 2004, until 2359 hours l.t., May 26, 2004; after which the fishery will remain closed until opened through an additional inseason action for the west coast salmon fisheries, which will be published in the **Federal Register**, or until the effective date of the next scheduled open period announced in the 2004 annual management measures. Comments will be accepted through June 22, 2004.

ADDRESSES: Comments on these actions must be mailed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070; or faxed to 206–526–6376; or Rod McInnis, Acting Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132; or faxed to 562–980–4018. Comments can also be submitted via e-mail at the *2004oceansalmonIA#2-#3.nwr@noaa.gov* address, or through the internet at the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments, and include [docket number and/or RIN number] in the subject line of the message. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: Christopher Wright, 206–526–6140.

SUPPLEMENTARY INFORMATION: The Regional Administrator (RA) modified the season for the commercial fishery in the area from the U.S.-Canada Border to Cape Falcon, OR to reopen May 15 and close at midnight l.t. on May 18, 2004, with the restriction that no vessel may possess, land, or deliver more than 125 chinook for the entire 4 day open period. On May 14 the Regional Administrator had determined that the available catch and effort data indicated that there was enough of the chinook quota to allow four additional days of fishing. The fishery was scheduled to be reevaluated on May 21 to consider whether additional openings would be appropriate.

On May 21, 2004, the RA again modified the season for the commercial fishery in the area from the U.S.-Canada Border to Cape Falcon, OR, this time to reopen May 24 and close at midnight on May 26, 2004, with the restriction that no vessel may possess, land, or deliver more than 70 chinook for the entire 3 day open period. The RA determined that the available catch and effort data indicated that there was enough of the chinook quota to allow three additional days of fishing.

For both inseason actions, all other restrictions remained in effect as announced for 2004 ocean salmon fisheries. These actions were necessary to conform to the 2004 management goals. Recision of automatic season closures are authorized by regulations at 50 CFR 660.409(a)(2). Modification of fishing seasons are authorized by regulations at 50 CFR 660.409(b)(1)(i).

In the 2004 annual management measures for ocean salmon fisheries (69 FR 25026, May 5, 2004), NMFS announced the commercial fishery for all salmon except coho in the area from the U.S.-Canada Border to Cape Falcon, OR would open May 1 through the earlier of June 30 or a 29,800 chinook quota. The fishery would be managed to provide a remaining quota of 500 chinook for a June 26 through 30 open period with a 50–fish, per vessel, landing limit for the 5–day open period. The resulting quota for the first part of the May-June fishery is therefore 29,300 chinook.

The fishery in the area from the U.S.-Canada Border to Cape Falcon, OR was modified by an inseason action to close effective at midnight l.t. on Wednesday, May 5, 2004 (69 FR 29464, May 24, 2004). The fishing season was closed to avoid exceeding the chinook quota.

On May 14 and 21, 2004, the RA consulted with representatives of the Pacific Fishery Management Council, Washington Department of Fish and Wildlife, and Oregon Department of Fish and Wildlife by conference call. Information related to catch to date, the chinook catch rate, and effort data indicated that there was enough of the chinook quota to allow two additional open periods of fishing. As a result, on May 14, the states recommended, and the RA concurred, that the area from the U.S.-Canada Border to Cape Falcon, OR, reopen May 15 and close at midnight l.t. on May 18, 2004, with the provision that no vessel may possess, land, or deliver more than 125 chinook for the entire 4 day open period. On May 21, the states recommended, and the RA concurred, that the area reopen on May 24 through midnight l.t. on May 26, 2004, with the restriction that no vessel may possess, land, or deliver more than 70 chinook for the entire three day open period. All other restrictions that apply to this fishery remained in effect as announced in the 2004 annual management measures.

The RA determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason actions recommended by the states. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with these Federal actions. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice to fishers of the above described actions was given, prior to the time each action was effective, by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

These actions do not apply to other fisheries that may be operating in other areas.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of these actions were provided to fishers through telephone hotline and radio notification. These actions comply with the requirements of the annual management measures for ocean salmon fisheries (69 FR 25026, May 5, 2004), the West Coast Salmon Plan, and regulations implementing the West Coast Salmon Plan 50 CFR 660.409 and 660.411. Prior notice and opportunity for public comment was impracticable because NMFS and the state agencies had insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data were collected to determine the extent of the fisheries, and the time the fishery modifications had to be implemented in order to allow fishers access to the available fish at the time the fish were available. The AA also finds good cause to waive the 30–day delay in effectiveness required under U.S.C. 553(d)(3), as a delay in effectiveness of these actions would unnecessarily limit fishers appropriately controlled access to available fish during the scheduled fishing season.

These actions are authorized by 50 CFR 660.409 and 660.411 and are exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 1, 2004.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 04–12809 Filed 6–4–04; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 109
Monday, June 7, 2004

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 230

[Regulation DD; Docket No. R–1197]

Truth in Savings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board proposes to amend Regulation DD, which implements the Truth in Savings Act, and the staff commentary to the regulation, to address concerns about the uniformity and adequacy of information provided to consumers when they overdraw their accounts. The proposed amendments, in part, address a specific service offered by depository institutions, commonly referred to as "bounced-check protection" or "courtesy overdraft protection."

Bounced-check protection is an automated service that is sometimes provided to deposit account consumers as an alternative to a traditional line of credit. To address concerns about the marketing of bounced-check protection services, a proposed revision to the regulation would expand the prohibition against misleading advertisements to cover communications with current consumers about existing accounts; the staff commentary would provide examples. Proposed revisions to Regulation DD would require additional fee and other disclosures about automated overdraft services, including in advertisements. The Board also is proposing amendments of general applicability that would require institutions to provide more uniform disclosures about overdraft and returned-item fees.

DATES: Comments must be received on or before August 6, 2004.

ADDRESSES: You may submit comments, identified by Docket No. R–1197, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- *FAX:* 202/452–3819 or 202/452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. All public comments are available from the Board's web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Eurgubian, Attorney, or Ky Tran-Trong or Krista P. DeLargy, Senior Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf ("TDD") only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. The Truth in Savings Act

The Truth in Savings Act (TISA), 12 U.S.C. 4301 *et seq.*, is implemented by the Board's Regulation DD (12 CFR part 230). The purpose of the act and regulation is to assist consumers in comparing deposit accounts offered by depository institutions, principally through the disclosure of fees, the annual percentage yield (APY), the interest rate, and other account terms. An official staff commentary interprets the requirements of Regulation DD (12 CFR part 230 (Supp. I)). Credit unions are governed by a substantially similar regulation issued by the National Credit Union Administration.

Under TISA and Regulation DD, disclosures must be given upon a consumer's request and before an account is opened. Institutions are not required to provide periodic statements; but if they do, the act requires that fees, yields, and other information be provided on the statements. Notice must be given to accountholders before an adverse change in account terms occurs and prior to the renewal of certificates of deposit (time accounts).

TISA and Regulation DD contain rules for advertising deposit accounts. There is a prohibition against advertisements, announcements, or solicitations that are inaccurate or misleading, or that misrepresent the deposit contract. Institutions are also prohibited from describing an account as free (or using words of similar meaning) if a regular service or transaction fee is imposed, if a minimum balance must be maintained, or if a fee is imposed when a customer exceeds a specified number of transactions. In addition, the act and regulation impose substantive restrictions on institutions' practices regarding the payment of interest on accounts and the calculation of account balances.

II. Concerns About Bounced-Check Protection Services

Historically, depository institutions have used their discretion on an ad hoc basis to pay overdrafts for consumers on transaction accounts, usually imposing a fee. Over the years, some institutions automated the process for considering whether to honor overdrafts to reduce the costs of reviewing individual items, but generally institutions did not inform customers of their internal policies for determining whether an item would be paid or returned. More recently, third-party vendors have developed and sold automated programs to institutions, particularly to smaller ones. What generally distinguishes the vendor programs from institutions' in-house automated processes is the addition of marketing plans that appear designed to promote the generation of fee income by stating a dollar amount that consumers would be allowed to overdraw and by encouraging consumers to overdraw their accounts and use the service as a line of credit.

While bounced-check protection services vary among institutions, many programs have the following characteristics:

- Institutions inform consumers that overdraft protection is a feature of their accounts and promote the use of the service. Institutions also inform

consumers of their aggregate dollar limit under the overdraft protection program.

- Coverage is automatic for consumers who meet the institution's criteria (*e.g.*, account has been open a certain number of days, deposits are made regularly). Typically, the institution performs no credit underwriting.
- Overdrafts generally are paid up to the aggregate limit set by the institution for the specific class of accounts, typically $100 to $500.
- Many program disclosures state that payment of an overdraft is discretionary on the part of the institution, and may disclaim any legal obligation of the institution to pay any overdraft.
- The service may extend to check transactions as well as other transactions, such as withdrawals at automated teller machines ("ATMs"), transactions using debit cards, pre-authorized automatic debits from a consumer's account, telephone-initiated funds transfers, and on-line banking transactions.
- A flat fee is charged each time the service is triggered and an overdraft item is paid. Commonly, a fee in the same amount would be charged even if the overdraft item were not paid. A daily fee also may apply for each day the account remains overdrawn.
- Some institutions offer closed-end loans to consumers who do not bring their accounts to a positive balance within a specified time period. These repayment plans allow consumers to repay their overdrafts and fees in installments.

In November 2002, when it published the annual proposed update to the staff commentary to Regulation Z, the Board solicited comment and information from the public about how bounced-check protection services are designed and operated, to determine the need for guidance to depository institutions under Regulation Z or other laws (67 FR 72618, December 6, 2002). The Board received approximately 350 comment letters; most were from industry representatives describing how the services work.

Consumer advocates, state agency representatives, and others believed that bounced-check protection services should be subject to TILA and Regulation Z. They noted that in addition to warning consumers about the high cost of the service, Truth in Lending disclosures would apprise consumers about the true nature of the service as a credit transaction. Industry commenters opposed coverage under TILA, stating that the current disclosure requirements under TISA are adequate, and that coverage under TILA would be burdensome. The Board believes that consumers would benefit from more uniform and complete information about the costs and terms of overdraft services not covered under TILA, including in advertisements. Improvements in the disclosures provided to consumers could aid them in understanding the costs associated with overdrawing their accounts and promote better account management. The Board is not proposing at this time to cover these services under TILA and Regulation Z, although further consideration of the need for such coverage may be appropriate if concerns about these overdraft programs persist in the future.

Paying consumers' occasional or inadvertent overdrafts is a long-established customer service provided by depository institutions. The Board recognized this longstanding practice when it initially adopted Regulation Z in 1969; the regulation provided that these transactions are generally exempt from coverage under Regulation Z where there is no written agreement between the consumer and institution to pay an overdraft and impose a fee. *See* § 226.4(c)(3). The exemption was designed to facilitate depository institutions' ability to accommodate consumers on an ad-hoc basis.

The Board's study of bounced-check protection services has identified a number of concerns about some programs. One major concern relates to the adequacy of information provided to consumers whose accounts are eligible for bounced-check protection services. The proposed revisions to Regulation DD and the staff commentary are intended to improve the information provided to consumers about these overdraft services.

Other concerns center on institutions' marketing practices. Although the service is designed to protect consumers against occasional inadvertent overdrafts, some institutions' promotional materials make the service appear to be a line of credit, apparently to promote a consumer's repeated use of the service. Many of the marketing plans include material that informs consumers of the availability of the bounced-check protection service, and also of the maximum aggregate dollar amount of overdrafts the institution will pay. Some marketing plans encourage consumers to use the service to meet short-term credit needs, and not just as protection against inadvertent overdrafts. Some institutions have encouraged consumers specifically to use an overdraft as an advance on their next paycheck. Notwithstanding the marketing promises, however, qualifying language disclaims any legal obligation by the institution to pay any overdraft. In some cases, deposit accounts that are promoted as being "free" also promote bounced-check protection services that involve substantial fees. In addition, some institutions do not clearly inform consumers that ATM withdrawals, debit card transactions, or other electronic transfers may routinely be authorized under these overdraft services and that fees will be imposed in such cases. Proposed revisions to Regulation DD's advertising rules and disclosure requirements are intended to address these concerns.

In addition to the Board's proposed revisions to Regulation DD and the staff commentary, the member agencies of the Federal Financial Institution Examination Council (FFIEC) have developed proposed supervisory guidance for institutions that offer bounced-check protection services. The proposed interagency guidance, which is being published for comment, would include best practices addressing the marketing and operation of bounced-check protection services. For example, institutions would be encouraged to obtain customers consent to receive overdraft protection or inform customers how they may "opt out" of the service, avoid encouraging routine or intentional overdrafts, and to promptly notify consumers when they access an overdraft protection service.

III. Concerns About Uniform Disclosure of Overdraft Fees

The Board has concerns about the uniformity and adequacy of cost disclosures provided to consumers regarding overdraft and returned-item fees under Regulation DD. Many institutions already provide timely information to consumers about overdrafts in their accounts and the fees imposed, including notices that are sent at the time the overdraft occurs and on periodic statements. These practices and disclosures are not uniform among institutions, however, and some consumers may not receive adequate information on a timely basis.

Fees for paying overdrafts and for returned items are typically flat fees unrelated to the amount of the item. These amounts may be significant when there are multiple overdrafts although the items may represent relatively small dollar amounts. Even when consumers are aware that an account is or may become overdrawn, they do not necessarily know the number of overdraft items that will result or the total fees that will be imposed, both of which are determined by the order in

which items drawn on the account are presented and the institution's policies regarding the order in which items are paid. Accordingly, some consumers may not be aware of the total amount of fees being imposed and the amount by which the account is overdrawn until the next periodic statement is received. And when the periodic statement is provided, it may intersperse fees among other items rather than providing a total. As a result, the overall cost of obtaining credit through an overdraft service is not clearly presented to consumers.

TISA was enacted, in part, for the purpose of requiring clear and uniform disclosures regarding deposit account terms and fees assessable against these accounts. Such disclosures allow consumers to make meaningful comparisons among different accounts and to make informed judgments about the use of their accounts. To further the purposes of TISA, the Board is proposing uniform requirements for notifying consumers about returned-item fees and overdraft fees (whether the overdraft is created by check, by ATM withdrawal or other electronic transfer, or by other means). These rules will also help ensure that where an overdraft is paid, consumers are uniformly notified about the account's status. Information about overdrafts and returned items that is provided on a regular and timely basis may enable consumers to avoid unnecessary fees; it may assist consumers to better consider their approach to account management and determine whether the account's terms and features are suited to their needs or whether other types of accounts or services would be more appropriate.

IV. Summary of Proposed Revisions

Pursuant to its authority under Section 269(a) of TISA, the Board is proposing the following revisions to Regulation DD and the staff commentary to address concerns about the uniformity and adequacy of institutions' disclosure of overdraft fees generally, and to address concerns about advertised automated overdraft services ("bounced-check protection services") in particular:

Disclosures Concerning Overdraft Fees Generally

Periodic statements. Institutions that provide periodic statements would be required to include the total amount of fees imposed for overdrafts and the total amount of fees for returned items for the statement period and for the calendar year to date.

Account-opening disclosures. Institutions would be required to specify in the account-opening disclosures provided under the Truth in Savings Act whether overdraft protection fees may be imposed in connection with checks, automated teller machine (ATM) withdrawals, or other electronic fund transfers.

Additional Protections for Accounts With Certain Overdraft Protection Services (Bounced-Check Protection)

Additional advertising disclosures. To reduce consumer confusion about the nature of the overdraft service and how it differs from a traditional line of credit, institutions that market automated overdraft payment services that are not covered by TILA would have to include in their advertisements about the service: the fee for the payment of each overdraft item, the types of transactions covered, the time period consumers have to repay or cover any overdraft, and the circumstances under which the institution would not pay an overdraft. An exemption in Regulation DD for broadcast media, billboards, and telephone response machines, which applies to other types of advertising disclosures, would also apply here.

Prohibiting misleading advertisements. TISA prohibits advertisements, announcements, or solicitations that are misleading or that misrepresent the deposit contract. Currently, Regulation DD applies the prohibition only to advertisements for prospective accounts. To address concerns about overdraft protection services, Regulation DD would be amended to also apply the prohibition to communications with consumers about the terms of their current accounts.

Examples of misleading advertisements. The staff commentary would also be revised to provide five examples of advertisements that would ordinarily be deemed misleading: (1) Representing an overdraft protection service as a "line of credit;" (2) representing that the institution will honor all checks or transactions, when the institution retains discretion at any time not to honor any transaction; (3) representing that consumers may overdraw their accounts and maintain a negative balance for an indefinite or extended period when the terms of the service require consumers to promptly return the deposit account to a positive balance; (4) describing a service solely as protection against bounced checks when the overdraft service may be imposed in connection with ATM withdrawals and other electronic fund transfers that permit consumers to overdraw their account; and (5) describing an account as "free" or "no cost" and also promoting a service for which there is a fee (including a bounced-check protection service), unless the advertisement clearly and conspicuously indicates there is a cost associated with the service.

V. Section-by-Section Analysis

Section 230.2 Definitions

2(b) Advertisements

TISA prohibits institutions from making any advertisement, announcement, or solicitation relating to a deposit account that is inaccurate or misleading or that misrepresents its deposit contract. 12 U.S.C. 4302(e). Regulation DD defines "advertisement" to include "a commercial message appearing in any medium, that promotes directly or indirectly the availability of, or a deposit in, an account." *See* § 230.2(b). Under the existing staff commentary, institutions' communications with consumers about existing accounts are not considered "advertisements" under Regulation DD. *See* comment 2(b)–2.iii. The Board is proposing to revise the definition of an advertisement to cover communications with existing consumers for some purposes. The revised definition does not affect rules for triggering additional disclosures when an advertisement states an APY or bonus; the existing definition of "advertisement," which would continue to apply for this purpose, would be redesignated as § 230.2(b)(1) and would also be modified for stylistic consistency; no substantive change is intended.

Proposed § 230.2(b)(2) applies TISA's prohibition against misleading or inaccurate advertisements or misrepresentations of the deposit contract to communications with consumers about existing accounts. The expanded definition of an advertisement that covers existing accounts would also apply in determining whether a communication is an advertisement that triggers additional disclosures about overdraft protection services.

An advertisement includes a commercial message that invites, offers, or otherwise promotes a deposit or other service in connection with an account or class of accounts. The revision to the definition of "advertisement" does not affect providing required disclosures on an account, such as at account opening, on a periodic statement, or on an electronic terminal receipt (as required by TISA or the Electronic Fund Transfer Act, 15 U.S.C. 1693 *et seq.*), for example. See new comment 2(b)–2. Current comment 2(b)–2 would be redesignated as comment 2(b)–3.

Section 230.4 Account Disclosures

4(b) Content of Account Disclosures

4(b)(4) Fees

Under TISA and Regulation DD, before an account is opened, institutions must provide a schedule describing all fees that may be charged in connection with the account. The schedule must also disclose the amount of the fee and the conditions under which the fee will be imposed. 12 U.S.C. 4303; § 230.4(b)(4). When terms required to be disclosed in the schedule change and adversely affect accountholders, notice of the change must be provided 30 days in advance. 12 U.S.C. 4305; § 2305(a).

Currently the guidance for describing fees is quite general, providing that "naming and describing the fee will typically satisfy these requirements." *See* comment 4(b)(4)–3. Proposed comment 4(b)(4)–5 would require institutions to state in their account-opening disclosures the types of transactions for which an overdraft protection fee may be imposed. Solely describing an overdraft protection fee as a "fee for overdrafts" or "fee for overdraft items" would not provide sufficient notice to consumers as to whether the fee applies to overdrafts by check only or whether it also applies to overdrafts by other means. The proposed comment would clarify that the disclosure must indicate that a fee may be imposed in connection with checks, ATM withdrawals, or other electronic fund transfers that overdraw the account, if that is the case.

Section 230.6 Periodic Statement Disclosures

6(a) General Rule

6(a)(3) Fees Imposed

Although periodic statements are not required by TISA, an institution that provides such statements must disclose any fees or charges imposed on the account during the statement period. To assist consumers in better understanding the costs associated with overdrawing their accounts, the Board is proposing to revise the requirements for providing cost disclosures on periodic statements.

Under Regulation DD, fees must be itemized on a periodic statement by type, for example, by separately listing the monthly service charge, ATM fees, and returned check fees. When multiple fees of the same type are charged in a single period, comment 6(a)(3)–2 in the current staff commentary to the regulation states that institutions have the option of showing each fee as a separate charge or, alternatively, aggregating all fees of the same type and disclosing a single dollar amount for that category. For clarity, this guidance would be moved to § 230.6(a)(3)(i) of the regulation.

Under proposed § 230.6(a)(3)(ii), institutions would be required to disclose overdraft fees or returned-item fees on periodic statements on an aggregate basis for the statement period. Institutions that currently disclose each fee as a separate charge on periodic statements could continue to do so as an additional voluntary disclosure. Comment 6(a)(3)–2 provides guidance on itemizing and describing fees on periodic statements. The comment would be revised to reflect the proposed revisions to the regulation concerning overdraft fees and returned-item fees and to clarify that these two types of fees may not be grouped together as fees for insufficient funds.

To highlight the overall cost to consumers of presenting items on an account with insufficient funds on a routine basis, proposed § 230.6(a)(3)(ii) would require institutions' periodic statements to show the total amounts for overdraft fees and returned-item fees for the calendar year to date. The Board believes that disclosure of year-to-date totals would better inform consumers about the cumulative effect of using an overdraft service on a regular basis. An institution's disclosures regarding the total overdraft fees paid by a consumer during the calendar year might also serve as a source of information for financial institutions seeking to monitor consumers' frequency in overdrawing their accounts. The Board requests comment on whether the requirement to disclose cumulative year-to-date fee totals should be limited to institutions that market overdraft payment services, and thereby encourage the routine use of the service.

Section 230.8 Advertising

Under the proposal, § 230.8(a) of Regulation DD would be reorganized for clarity. The regulation and staff commentary would be revised to specifically address the promotion of bounced-check protection services.

8(a) Misleading or Inaccurate Advertisements

8(a)(1)

Some bounced-check protection services, typically those provided under programs developed by third-party vendors, include marketing plans that appear designed to increase customer usage of overdrafts. Some marketing plans include materials that encourage consumers to overdraw their accounts and use the service as a line of credit by stating that overdrafts up to a specific dollar amount will be paid. Some marketing plans also include statements suggesting that consumers may treat the service as a line of credit, for example, to take an advance on their next paycheck or to cover unexpected expenses.

Notwithstanding the marketing promises, the vendors' programs include qualifying language disclaiming any legal obligation by the institution to pay any individual overdraft, regardless of the amount. The institutions' reservation of the right not to pay overdrafts may not appear prominently or conspicuously in the marketing materials. Moreover, unlike traditional lines of credit, consumers using bounced-check protection services generally are not permitted to carry a credit balance forward at a predetermined and disclosed rate of interest. Instead, consumers using the service are generally charged a flat fee for each overdraft item and are expected to repay the entire overdraft amount within a short period. Under these circumstances, implying that the overdraft service is a traditional line of credit or suggesting that the service can be used like a line of credit may be inconsistent with the actual terms and limitations of the service.

As discussed above, Regulation DD would be revised to apply TISA's prohibition against misrepresentations and misleading advertisements to communications with consumers about their existing accounts, to cover institutions' marketing of deposit-related services, including bounced-check protection services. A new comment 8(a)–10 would be added to provide guidance on the types of advertisements that may violate the rule.

Five new examples would be added to the commentary relating to the promotion of overdraft payment services. The staff commentary would be revised to state that institutions may not mislead consumers by representing an overdraft service as a "line of credit" unless the service is subject to the Board's Regulation Z. An advertisement could also mislead consumers if it represents that the institution will honor all checks or authorize all transactions that overdraw an account, with or without a specified dollar limit, when the institution retains discretion at any time not to honor checks or authorize transactions.

A third example would state that an advertisement could mislead consumers by representing that consumers with overdrawn accounts are allowed to maintain a negative balance when the

terms of the account's overdraft service require consumers to promptly return the deposit account to a positive balance. The fourth example provides that promotional materials describing a service solely as protection against bounced checks could mislead consumers if the service also applies to ATM withdrawals and other debit card transactions and electronic fund transfers.

A fifth new example of misleading advertisements relates to the advertisement of free accounts. Under Regulation DD, an institution may not describe an account as "free" (or use a similar term) if any maintenance or activity fee may be imposed on the account. Examples of fees that trigger the prohibition against advertising an account as free are listed in comment 8(a)–3.

Comment 8(a)–4 lists certain account-related fees that are not considered to be maintenance or activity fees, for example, check-printing fees, stop-payment fees, or fees associated with checks that are returned unpaid. Likewise, fees for bounced-check protection services would not be considered maintenance or activity fees, because the fees relate to the institution's provision of credit as opposed to fees related to the use of the consumer's own funds in the account. Nevertheless, there has been concern that some institutions promote bounced-check protection services as a feature of their free checking accounts, and that consumers may be misled into thinking that overdraft protection on such accounts is without costs.

The commentary would be revised to state that an advertisement would be deemed misleading if the account is described as "free" and also promotes account-related services for which there is a fee, unless the advertisement clearly and conspicuously indicates there is a cost associated with the advertised service. Under proposed comment 8(a)–10, the advertisement may, but need not, state the actual cost of the service, although such a disclosure may be required under proposed § 230.8(f) for certain advertisements. The proposed comment applies to fees for account-related services that are not considered "maintenance or activity fees" (such as fees for bounced-check protection or for specially designed checks). Regulation DD's prohibition against advertising an account as "free" if the institution imposes a "maintenance or activity fee" is unaffected by the proposal.

Comment is also solicited on other types of advertisements of overdraft protection services that would potentially mislead consumers about (i) the terms, limitations, costs, or nature of the service and (ii) the fact that the service is not a traditional line of credit. For example, where an institution's payment of overdrafts is automated, does advertising to consumers that the institution will pay overdrafts up to a specified dollar amount mislead consumers about the nature of the service? Furthermore, would such an advertisement potentially mislead consumers about whether the bank may not pay an overdraft? Does encouraging consumers to use the service to obtain credit instead of using it to cover inadvertent overdrafts mislead consumers about the actual terms of the service? Do advertisements that encourage the regular or routine use of the service mislead consumers about the cost of the service?

Section 230.8(a)(1) is revised for stylistic consistency, without substantive change.

8(a)(2)

TISA's limitation on advertising an account as free is implemented in § 230.8(a). This provision would be redesignated as § 230.8(a)(2), without any substantive change.

8(f) Additional Disclosures in Connection With Automated Overdraft Services

TISA and Regulation DD require additional information to be provided if an advertisement for a deposit account refers to a specific rate of interest, yield, or rate of earnings. 12 U.S.C. 4302; § 230.8(c). Advertisements for bonuses on deposit accounts also trigger additional information. § 230.8(d). TISA authorizes the Board to exempt "broadcast and electronic media and outdoor advertising from stating some additional information, if the Board finds the disclosures to be unnecessarily burdensome." 12 U.S.C. 4302(b). These limited disclosure rules are implemented in § 230.8(e)(1). The exemptions for broadcast and electronic media do not extend to advertisements posted on the Internet or sent by e-mail.

A principal concern about institutions' promotion of overdraft protection services is that consumers may be led to believe that the service represents a traditional line of credit. Some marketing materials focus on the dollar amount of the overdraft limit, which may lead consumers to believe that a line of credit is being provided. Some advertisements create the impression that the service can be relied upon to obtain short term extensions of credit from time to time (up to a given amount) at minimal cost. These promotions may mislead or confuse consumers regarding the nature, costs, terms, and limitations of the service. This problem may be magnified somewhat because marketed automated overdraft services are relatively new.

Where consumers are targeted with advertisements about overdraft protection services, additional disclosures could reduce the potential that some consumers would be misled, and generally educate consumers about the nature of the service to enable them to compare the terms offered by different financial institutions. Accordingly, in order to ensure that advertisements promoting overdraft protection services are not misleading, the Board is proposing to revise Regulation DD to require certain disclosures in advertisements for automated overdraft payment services. To reduce consumer confusion about the costs, terms, and limitations of the service and how it differs from a traditional line of credit, advertisements would be required to disclose (1) the fee for the payment of each overdraft item; (2) the types of transactions covered; (3) the amount of time the consumer has to repay or cover any overdraft; and (4) the circumstances under which the institution would not pay an overdraft.

The proposed rule would provide an exemption for certain types of advertisements to mirror exemptions provided for other types of advertising disclosures. Under TISA and Regulation DD, advertisements that state the annual percentage yield for an account must also disclose certain other information. The regulation specifically exempts from these disclosure requirements, advertisements using broadcast media, outdoor billboards, and telephone response machines. These exemptions were based on concerns about the practical limitations of time and space for these types of media; these concerns are not as significant for print advertising or marketing on Internet Web sites. These exemptions would also apply to the advertising rules for automated overdraft payment services under proposed § 230.8(f). Proposed comment 8(f)–1 would clarify that for purposes of the advertising disclosures, institutions may describe the types of transactions covered in the same manner as the disclosures required before account-opening (*see* proposed comment 4(b)(4)–5).

Comment 8(f)–2 provides that in describing the circumstances under which an institution will not pay an overdraft, a general description will typically satisfy the requirement, for example, statements such as "overdrafts will not be paid if your account is not in good standing, you are not making

regular deposits, or you have too many overdrafts."

Comment 8(f)–3 clarifies the relationship between the general guidance in comment 8(a)–10.v. (the rules for advertisements that promote free accounts as well as an account-related service for which a fee is charged) and the requirements of § 230.8(f) when the account-related service being advertised is an automated overdraft service.

VI. Form of Comment Letters

Comment letters should refer to Docket No. R–1197 and, when possible, should use a standard typeface with a font size of 10 or 12; this will enable the Board to convert text submitted in paper form to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may be mailed electronically to *regs.comments@federalreserve.gov.*

VII. Solicitation of Comments Regarding the Use of "Plain Language"

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the Board to use "plain language" in all proposed and final rules published after January 1, 2000. The Board invites comments on whether the proposed rules are clearly stated and effectively organized, and how the Board might make the proposed text easier to understand.

VIII. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires federal agencies to publish an initial regulatory flexibility analysis to describe the impact of proposed rules on small entities. A final regulatory flexibility analysis will be prepared and will consider comments received during the public comment period.

1. *Statement of the objectives of the proposal.* The Board is proposing revisions to Regulation DD to address the uniformity and adequacy of insitutions' disclosure of overdraft fees generally, and to address concerns about advertised automated overdraft services ("bounced-check protections services") in particular. As stated more fully above, the existing regulation would be amended to provide that depository institutions offering certain overdraft payment services would be required to provide more complete information regarding those services. Account-opening disclosures and other marketing materials would describe more completely how fees may be triggered. The total dollar amount of overdraft and returned-item fees for the period and for the calendar year to date would be required on periodic statements. Certain advertising practices would be prohibited, and additional disclosures would be required.

TISA was enacted, in part, for the purpose of requiring clear and uniform disclosures regarding deposit account terms and fees assessable against these accounts. Such disclosures allow consumers to make meaningful comparisons between different accounts and also allow consumers to make informed judgments about the use of their accounts. 12 U.S.C. 4301. TISA authorizes the Board to prescribe regulations to carry out the purpose and provisions of the statute. 12 U.S.C. 4308(a)(1). The act expressly states that the Board's regulations may contain "such classifications, differentiations, or other provisions, * * * as, in the judgment of the Board, are necessary or proper to carry out the purposes of [the Act], to prevent circumvention or evasion of the requirements of [the Act], or to facilitate compliance with the requirements of [the Act]." 12 U.S.C. 4308(a)(3). The Board believes that the proposed revisions to Regulation DD discussed above are within the Congress' broad grant of authority to the Board to adopt provisions that carry out the purposes of the statute.

2. *Small entities affected by the proposal.* The number of small entities affected by this proposal is unknown. Approximately 14,580 depository institutions in the United States that must comply with the Truth in Savings Act have assets of $150 million or less and thus are considered small entities for purposes of the Regulatory Flexibility Act, based on 2003 call report data. Approximately 5,900 are institutions that must comply with the Board's Regulation DD; approximately 8,860 are credit unions that must comply with National Credit Union Administration regulations, which must be substantially similar to the Board's Regulation DD. The Board believes small depository institutions that offer accounts where overdraft or returned-item fees are imposed currently send periodic statements on those accounts. Periodic statement disclosures would need to be revised to display aggregate overdraft and aggregate returned-item fees for the statement period and year to date. Account-opening disclosures and marketing materials would have to be reviewed, and perhaps revised.

3. *Other federal rules.* The Board believes no federal rules duplicate, overlap, or conflict with the proposed revisions to Regulation DD.

4. *Significant alternatives to the proposed revisions.* As discussed above, the Board requests comment on whether the requirement to disclose cumulative year-to-date totals for overdraft and returned-item fees should be limited to institutions that market overdraft payment services, and thereby encourage the routine use of the service.

IX. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0271.

The collection of information that is revised by this rulemaking is found in 12 CFR part 230 and in Appendix B. This collection is mandatory (15 U.S.C. 4301 *et seq.*) to evidence compliance with the requirements of Regulation DD and the Truth in Savings Act (TISA). Institutions are required to retain records for twenty-four months. The respondents/recordkeepers are for-profit depository institutions, including small businesses. This regulation applies to all types of depository institutions, not just state member banks. Under Paperwork Reduction Act regulations, however, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden on their respective constituencies under this regulation.

The proposed revisions provide that depository institutions offering certain overdraft payment services would be required to provide more complete information regarding those services. Account-opening disclosures and other marketing materials would describe more completely how fees may be triggered. The total dollar amount of overdraft and returned-item fees for the period and for the calendar year to date would be required on periodic statements, and year-to-date totals would be required. Certain advertising practices would be prohibited, and additional disclosures would be required. Although the proposal adds these requirements, it is expected that these revisions would not significantly increase the paperwork burden of depository institutions. With respect to state member banks, it is estimated that there are 976 respondent/recordkeepers. Current annual burden is estimated to be 146,644 hours.

Because the records are maintained at state member banks and the notices are

not provided to the Federal Reserve, no issue of confidentiality arises under the Freedom of Information Act.

The Federal Reserve requests comments from depository institutions, especially state member banks, that will help to estimate burden of the various disclosures that would be made in the first year this proposed regulation would be effective. Comments are invited on: (a) The cost of compliance; (b) ways to enhance the quality, utility, and clarity of the information to be disclosed; and (c) ways to minimize the burden of disclosures on respondents, including through the use of automated disclosure techniques or other forms of information technology. Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0271), Washington, DC 20503, with copies of such comments sent to Cynthia Ayouch, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold-faced arrows while language that would be deleted is set off with bold-faced brackets.

List of Subjects in 12 CFR Part 230

Advertising, Banks, Banking, Consumer protection, Reporting and recordkeeping requirements, Truth in savings.

For the reasons set forth in the preamble, the Board proposes to amend Regulation DD, 12 CFR part 230, as set forth below:

PART 230—TRUTH IN SAVINGS (REGULATION DD)

1. The authority citation for part 230 continues to read as follows:

Authority: 12 U.S.C. 4301 *et seq.*

2. Section 230.2 is amended by revising paragraph (b) to read as follows:

§ 230.2 Definitions.

* * * * *

(b) Advertisement means a commercial message, appearing in any medium, that promotes directly or indirectly:

►(1)◄ The availability ►or terms◄ of, or a deposit in, a ►new◄ account ►; and

(2) For purposes of § 230.8(a) and (f) of this part, the terms of, or a deposit in, a new or existing account.◄

* * * * *

3. Section 230.6 is amended by republishing the introductory text and revising paragraph (a)(3) to read as follows:

§ 230.6 Periodic statement disclosures.

(a) *General rule.* If a depository institution mails or delivers a periodic statement, the statement shall include the following disclosures:

* * * * *

(3) *Fees imposed.* Fees required to be disclosed under § 230.4(b)(4) of this part that were debited to the account during the statement period. The fees shall be itemized by type and dollar amounts.

►(i) *General.* Except as provided in paragraph (a)(3)(ii) of this section, when fees of the same type are imposed more than once in a statement period, a depository institution may itemize each fee separately or group the fees together and disclose a total dollar amount for all fees of that type.

(ii) *Overdraft and returned-item fees.* Institutions must disclose a total dollar amount for all overdraft fees and a total dollar amount for all returned-item fees for the statement period and for the calendar year to date. The total dollar amount for overdraft fees shall include all overdrafts on the account, whether created by check, by ATM withdrawal or other electronic transfer, or by other means. Institutions may itemize each overdraft fee or returned-item fee, in addition to providing the disclosures required by this paragraph.◄

* * * * *

4. Section 230.8 is amended by revising paragraph (a) and adding a new paragraph (f) to read as follows:

§ 230.8 Advertising.

(a) *Misleading or inaccurate advertisements.* An advertisement shall not:

►(1)◄ Be misleading or inaccurate ►or◄ [and shall not] misrepresent a depository institution s deposit contract.

►(2)◄ [An advertisement shall not] Refer to or describe an account as "free" or "no cost" (or contain a similar term) if any maintenance or activity fee may be imposed on the account. The word "profit" shall not be used in referring to interest paid on an account.

* * * * *

►(f) *Additional disclosures in connection with automated overdraft services.* Except for an advertisement subject to paragraph (e)(1) of this section, any announcement, solicitation, or advertisement promoting an automated overdraft service that is not subject to the Board's Regulation Z (12 CFR part 226) shall disclose in a clear and conspicuous manner:

(1) The fee for the payment of each overdraft;

(2) The types of transactions for which a fee for overdrawing an account may be imposed;

(3) The time period by which the consumer must repay or cover any overdraft; and

(4) The circumstances under which the institution would not pay an overdraft.◄

* * * * *

5. In Supplement I to part 230:

a. Under Section 230.2 Definitions, under *(b) Advertisement,* existing paragraph 2. is redesignated as paragraph 3.; a new paragraph 2. is added; and newly designated paragraph 3.iii. is revised.

b. Under Section 230.4 Account disclosures, under *(b)(4) Fees,* a new paragraph 5. is added.

c. Under Section 230.6 Periodic statement disclosures, under *(a)(3) Fees imposed,* paragraph 2. is revised.

d. Under Section 230.8 Advertising, under *(a) Misleading or inaccurate advertisements,* a new paragraph 10. is added, a new paragraph title *(f) Additional disclosures in connection with automated overdraft services* is added, and new paragraph (f) 1. through (f) 3. are added.

Supplement I To Part 230—Official Staff Interpretations

Section 230.2 Definitions

* * * * *

(b) Advertisement

* * * * *

►2. *Existing accounts.* For purposes of the prohibition on misleading advertisements in § 230.8(a) of this part and disclosure requirements under § 230.8(f) of this part, an advertisement includes a commercial message in visual, oral, or print media that invites, offers, or otherwise promotes a deposit in, or other service available in connection with, an existing consumer account or class of accounts. An institution is not promoting a deposit or service solely by providing disclosures required by Federal or other applicable law at account opening, on a periodic statement, or on an electronic terminal receipt.◄

►3.◄ * * *

iii. ►For purposes of § 230.8(b) of this part through § 230.8(e) of this part,◄ information given to consumers about existing accounts, such as current rates recorded on a voice-response machine or notices for automatically renewable time account sent before renewal.

* * * * *

Section 230.4 Account disclosures

* * * * *

(b) Content of account disclosures

* * * * *

(b)(4) Fees

* * * * *

►5. *Fees for overdrawing an account.* Under § 230.4(b)(4) of this part institutions must disclose the conditions under which a fee may be imposed. In satisfying this requirement institutions must specify the types of transactions for which an overdraft fee may be imposed. In describing the conditions, an institution must state whether the fee applies to overdrafts created by check, or by ATM withdrawal or other electronic transfer, as applicable. For example, where a fee may be imposed in such circumstances, disclosing a fee for covering an overdraft "created by check, or by ATM withdrawal or other electronic transfer" would typically satisfy this requirement; disclosing a fee "for overdraft items" would not.◄

* * * * *

Section 230.6 Periodic statement disclosures

(a) General rule

* * * * *

(a)(3) Fees imposed

* * * * *

2. *Itemizing fees by type.* In itemizing fees imposed more than once in the period, institutions may group fees if they are the same type. ►(But overdraft and returned-item fees each must be separately totaled for the statement period and cumulatively for the calendar year. See § 230.6(a)(3)(ii).)◄ [But] ► When fees of the same type are grouped together◄ the description must make clear that the dollar figure represents more than a single fee, for example, "total fees for checks written this period." Examples of fees that may not be grouped together are—

i. Monthly maintenance and excess-activity fees.

ii. "Transfer" fees, if different dollar amounts are imposed—such as $.50 for deposits and $1.00 for withdrawals.

iii. Fees for electronic fund transfers and fees for other services, such as balance-inquiry or maintenance fees.

►iv. Fees for transactions that overdraw an account and fees for returning checks or other items unpaid.◄

* * * * *

Section 230.8 Advertising

(a) Misleading or inaccurate advertisements

* * * * *

►10. *Examples.* Examples of advertisements that would ordinarily be misleading, inaccurate, or misrepresent the deposit contract are:

i. Representing an overdraft protection service as a "line of credit," unless the service is subject to the Board's Regulation Z, 12 CFR part 226.

ii. Representing that the institution will honor all checks or authorize all transactions that overdraw an account, with or without a specified dollar limit, when the institution retains discretion at any time not to honor checks or authorize transactions.

iii. Representing that consumers with an overdrawn account are allowed to maintain a negative balance when the terms of the account's overdraft service require consumers to promptly return the deposit account to a positive balance.

iv. Describing a service solely as protection against bounced checks when the service being promoted allows consumers to overdraw their accounts by other means, such as ATM withdrawals, debit card transactions, or other electronic fund transfers.

v. Advertising an account-related service for which a fee will be charged in an advertisement that also uses the word "free" or "no cost" (or a similar term) to describe the account, unless the advertisement clearly and conspicuously indicates that there is a cost associated with the service. If the fee is a maintenance or activity fee under § 230.8(a)(2) of this part, however, an advertisement may not describe the account as "free" or "no cost" (or contain a similar term) even if the fee is disclosed in the advertisement.◄

* * * * *

►*(f) Additional disclosures in connection with automated overdraft services.*

1. *Types of transactions.* Disclosing that a fee may be imposed for covering overdrafts on an account "created by check, or by ATM withdrawal or other electronic transfer" would typically satisfy the requirements of § 230.8(f)(2) of this part where the fee may be imposed in these circumstances. See comment 4(b)(4)–5.

2. *Circumstances for nonpayment.* In describing the circumstances under which an institution will not pay an overdraft, a general description will typically satisfy the requirement, for example, statements such as "overdrafts will not be paid if your account is not in good standing, or you are not making regular deposits, or you have too many overdrafts."

3. *Advertising an account as "free."* Comment 8(a)–10.v. provides general guidance to institutions that advertise free accounts with an account-related service for which a fee will be charged, and requires that the advertisement state that a cost is associated with the service. If the advertised account-related service is an overdraft service subject to the requirements of § 230.8(f) of this part, institutions must disclose the fee for the payment of each overdraft, not merely that a cost is associated with the overdraft service, as well as other required information.◄

* * * * *

By order of the Board of Governors of the Federal Reserve System, May 27, 2004.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 04–12521 Filed 6–4–04; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 261a

[Docket No. R–1200]

Privacy Act of 1974 Privacy Act Regulation

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) proposes to amend its regulation implementing the Privacy Act of 1974. The primary proposed changes concern the waiver of copying fees charged to current or former Board employees for access to records under the Privacy Act, and the special procedures for release of medical records. In addition, the Board is proposing to make minor editorial and technical changes.

DATES: Comment must be received on or before July 7, 2004.

ADDRESSES: You may submit comments, identified by Docket No. R–1200, by any of the following methods:

- Agency Web Site: *http://www.federalreserve.gov*. Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E–mail: *regs.comments@federalreserve.gov*. Include docket number in the subject line of the message.
- FAX: 202/452–3819 or 202/452–3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551.

All public comments are available from the Board's web site at www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boutilier, Managing Senior Counsel, (202/452–2418), Legal Division. For the hearing impaired only, contact Telecommunications Device for the Deaf (TDD)(202/263–4869).

SUPPLEMENTARY INFORMATION: The Board's Privacy Act Regulation was last revised in 1995 (60 FR 3341, January 17, 1995). In its ongoing review of regulations, the Board has determined that certain changes should be made to the regulation to adopt better procedures.

The first substantive change concerns waivers of the fee charged for copying records. The Privacy Act (5 U.S.C. 552a(f)(5)) permits an agency to assess copying fees for providing access to records. Section 261a.4(a) of the Board's current regulation states that the duplication fee for Privacy Act requests will be the same as that charged for duplication of records in response to a Freedom of Information Act request (currently $.10/page). Section 261a.4(c) states that, in the connection with a request by an employee for records to use in prosecuting a grievance or complaint of discrimination against the Board, fees totaling less than $50 will be waived, but the Secretary of the Board also may waive fees exceeding that amount. A review of current Board practice revealed that copies of personnel files are routinely provided to an employee upon request without assessing a copying fee, and copies of records relied upon in an adverse action must be provided to the subject employee without charge. Accordingly, the Board proposes to waive all fees for providing copies of information from systems of records to current or former employees.

The second substantive change concerns the special procedures for disclosing medical records. Currently, section 261a.7 of the Privacy Act Regulation permits the privacy officer, in consultation with the Board's physician, to determine that disclosure of medical records directly to the requester could have an adverse effect on the requester. In that situation, the Board would transmit the records to a licensed physician named by the requester, and the physician would disclose the records to the requester in a manner deemed appropriate by the physician. The Board proposes to expand the scope of these special procedures to cover records maintained in the Board's Employee Assistance Program (EAP) system of records. These records also may contain material that could have an adverse effect if disclosed directly to the requester, so the proposed change would permit a similar indirect disclosure through a licensed physician or other appropriate representative named by the requester. It is contemplated that such "appropriate representative" could be a psychologist, social worker, or even a parent or other relative.

The remaining proposed changes are technical or editorial in nature and should not have a substantive effect on persons.

Initial Regulatory Flexibility Analysis

The Privacy Act Regulation sets forth the procedures by which individuals may request access and amendment to records maintained in systems of records at the Board. The Board certifies that this rule will not have a significant economic impact on a substantial number of small entities, because it does not apply to business entities.

List of Subjects in 12 CFR Part 261a

Privacy.

For the reasons set forth in the preamble, the Board proposes to revise 12 CFR part 261a as follows:

PART 261a—PRIVACY ACT REGULATION

Subpart A—General Provisions

Subpart B—Procedures for Requests by Individual to Whom Record Pertains

Subpart C—Disclosure to Person Other than Individual to Whom Record Pertains

Subpart D—Exempt Records

Subpart A—General Provisions

§ 261a.1 Authority, purpose and scope.

(a) *Authority.* This part is issued by the Board of Governors of the Federal Reserve System (the Board) pursuant to the Privacy Act of 1974 (5 U.S.C 552a).

(b) *Purpose and scope.* This part implements the provisions of the Privacy Act of 1974 (5 U.S.C. 552a) with regard to the maintenance, protection, disclosure, and amendment of records contained within systems of records maintained by the Board. It sets forth the procedures for requests for access to, or amendment of, records concerning individuals that are contained in systems of records maintained by the Board.

§ 261a.2 Definitions.

For the purposes of this part, the following definitions apply:

(a) *Business day* means any day except Saturday, Sunday or a legal federal holiday.

(b) *Designated system of records* means a system of records maintained by the Board that has been published in the Federal Register pursuant to the requirements of 5 U.S.C. 552a(e).

(c) *Guardian* means the parent of a minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction.

(d) *Individual* means a natural person who is either a citizen of the United States or an alien lawfully admitted for permanent residence.

(e) *Maintain* includes maintain, collect, use, disseminate, or control.

(f) *Record* means any item, collection, or grouping of information about an individual maintained by the Board that contains the individual's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint, voice print, or photograph.

(g) *Routine* use means, with respect to disclosure of a record, the use of such record for a purpose that is compatible with the purpose for which it was collected or created.

(h) *System of records* means a group of any records under the control of the Board from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

§ 261a.3 Custodian of records; delegations of authority.

(a) *Custodian of records.* The Secretary of the Board is the official custodian of all records of the Board in the possession or control of the Board.

(b) *Delegated authority of Secretary.* With regard to this part, the Secretary of the Board is delegated the authority to—

(1) Respond to requests for access to, accounting of, or amendment of records contained in a system of records, except for such requests regarding systems of records maintained by the Board's Office of the Inspector General (OIG);

(2) Approve the publication of new systems of records and amend existing systems of records, except systems of records exempted pursuant to § 261a.13(b), (c) and (d);

(3) File the biennial reports required by the Privacy Act.

(c) *Delegated authority of designee.* Any action or determination required or permitted by this part to be done by the Secretary of the Board may be done by a responsible employee of the Board who has been duly designated for this purpose by the Secretary.

(d) *Delegated authority of inspector general.* With regard to systems of records maintained by the OIG, the Inspector General is delegated the authority to respond to requests for access or amendment.

§ 261a.4 Fees.

(a) *Copies of records.* Copies of records requested pursuant to § 261a.5 shall be provided at the same cost charged for duplication of records and/or production of computer output under the Board's Rules Regarding Availability of Information, 12 CFR 261.17.

(b) *No fee.* Documents will be furnished without charge where total charges are less than $5.

(c) *Waiver of fees.* No fees will be charged in connection with any request by an employee or former employees of the Board for access to information pertaining to that employee or former employee.

Subpart B—Procedures for Requests by Individual to Whom Record Pertains

§ 261a.5 Request for access to record.

(a) *Procedures for making request.* (1) Except as provided in paragraph (a)(2) of this section, any individual (or guardian of an individual) desiring to learn of the existence of, or to gain access to, his or her record in a designated system of records shall submit a request in writing to the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW, Washington, DC 20551.

(2) A request by a current Board employee for that employee's personnel records may be made in person during regular business hours at the Human Resources Function of the Management Division, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW, Washington, DC 20551.

(3) Requests for information contained in a system of records maintained by the Board's OIG shall be submitted in writing to the Inspector General, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, N.W., Washington, D.C. 20551.

(b) *Contents of request.* A request made pursuant to paragraph (a) of this section shall include the following:

(1) A statement that it is made pursuant to the Privacy Act of 1974;

(2) The name of the system of records expected to contain the record requested or a concise description of such system of records;

(3) Information necessary to verify the identity of the requester pursuant to paragraph (c) of this section; and

(4) Any other information that may assist in the rapid identification of the record to which access is being requested (*e.g.*, maiden name, dates of employment, etc.).

(c) *Verification of identity.* The Board may require proof of identity from a requester and reserves the right to determine the adequacy of such proof. In general, the following shall be considered adequate proof of identity:

(1) For a current Board employee, his or her Board identification card; or

(2) For an individual other than a current Board employee, either—

(i) Two forms of identification, one of which has a picture of the individual requesting access; or

(ii) A notarized statement attesting to the identity of the requester.

(d) *Verification of identity not required.* No verification of identity shall be required of individuals seeking access to records that are otherwise available to any person under the Freedom of Information Act, 5 U.S.C. 552.

(e) *Request for accounting of previous disclosures.* An individual may request an accounting of previous disclosures of records pertaining to such individual in a designated system of records as provided in 5 U.S.C. 552a(c).

§ 261a.6 Board Procedures for Responding to Request for Access.

(a) *Compliance with Freedom of Information Act.* Every request made pursuant to § 261a.5 shall also be handled by the Board as a request for information pursuant to the Freedom of Information Act (5 U.S.C. 552), except that the time limits set forth in paragraph (b) of this section and the fees specified in § 261a.4 shall apply to such requests.

(b) *Time limits.* Every request made pursuant to § 261a.5 shall be acknowledged or, where practicable, substantially responded to within 20 business days from receipt of the request.

(c) *Disclosure.*(1) Information to be disclosed pursuant to this part, except for information maintained by the Board's OIG, shall be made available for inspection and copying during regular business hours at the Board's Freedom of Information Office, or upon request, shall be sent to the requester.

(2) Information to be disclosed that is maintained by the Board's OIG shall be made available for inspection and copying by the OIG.

(3) The requester may be accompanied in the inspection of information by a person of the requester's own choosing upon the requester's submission of a written and signed statement authorizing the presence of such person.

(d) *Denial of request.* A denial of a request made pursuant to § 261a.5 shall include a statement of the reason(s) for denial and the procedures for appealing the denial.

§ 261a.7 Special procedures for medical records.

Medical or psychological records requested pursuant to § 261a.5 shall be disclosed directly to the requester unless such disclosure could, in the judgment of the privacy officer, in consultation with the Board's physician or Employee Assistance Program counselor, have an adverse effect upon the requester. Upon such determination, the information shall be transmitted to a licensed physician or other appropriate representative named by the requester, who will disclose those records to the requester in a manner the physician or representative deems appropriate.

§ 261a.8 Request for amendment of record.

(a) *Procedures for making request.* (1) An individual desiring to amend a record in a designated system of records that pertains to him or her shall submit a request in writing to the Secretary of the Board (or to the Inspector General for records in a system of records maintained by the OIG) in an envelope clearly marked "Privacy Act Amendment Request."

(2) Each request for amendment of a record shall—

(i) Identify the system of records containing the record for which amendment is requested;

(ii) Specify the portion of that record requested to be amended; and

(iii) Describe the nature of and reasons for each requested amendment.

(3) Each request for amendment of a record shall be subject to verification of identity under the procedures set forth in § 261a.5(c), unless such verification has already been made in a related request for access or amendment.

(b) *Burden of proof.* The request for amendment of a record shall set forth the reasons the individual believes the record is not accurate, relevant, timely, or complete. The burden of proof for demonstrating the appropriateness of the requested amendment rests with the requester, and the requester shall provide relevant and convincing evidence in support of the request.

§ 261a.9 Board review of request for amendment of record.

(a) *Time limits.* The Board shall acknowledge a request for amendment of a record within 10 business days of receipt of the request. Such acknowledgment may request additional information necessary for a determination on the request for amendment. A determination on a request to amend a record shall be made promptly.

(b) *Contents of response to request for amendment.* The response to a request for amendment shall include the following:

(1) The decision to grant or deny, in whole or in part, the request for amendment; and

(2) If the request is denied:

(i) The reasons for denial of any portion of the request for amendment;

(ii) The requester's right to appeal any denial; and

(iii) The procedures for appealing the denial to the appropriate official.

§ 261a.10 Appeal of adverse determination of request for access or amendment.

(a) *Appeal.* A requester may appeal a denial of a request made pursuant to § 261a.5 or § 261a.8 to the Board within 10 business days of issuance of notification of denial. The appeal shall—

(1) Be made in writing to the Secretary of the Board, with the words "PRIVACY ACT APPEAL" written prominently on the first page;

(2) Specify the background of the request; and

(3) Provide reasons why the initial denial is believed to be in error.

(b) *Determination.* The Board shall make a determination with respect to such appeal not later than 30 business days from its receipt, unless the time is extended for good cause shown.

(1) If the Board grants an appeal regarding a request for amendment, the Board shall take the necessary steps to amend the record, and, when appropriate and possible, notify prior recipients of the record of the Board's action.

(2) If the Board denies an appeal, the Board shall inform the requester of such determination, give a statement of the reasons therefor, and inform the requester of the right of judicial review of the determination.

(c) *Statement of disagreement.* (1) Upon receipt of a denial of an appeal regarding a request for amendment, the requester may file a concise statement of disagreement with the denial. Such statement shall be maintained with the record the requester sought to amend, and any disclosure of the record shall include a copy of the statement of disagreement.

(2) When practicable and appropriate, the Board shall provide a copy of the statement of disagreement to any person or other agency to whom the record was previously disclosed.

Subpart C—Disclosure To Person Other Than Individual To Whom Record Pertains

§ 261a.11 Restrictions on disclosure.

No record contained in a designated system of records shall be disclosed to any person or agency without the prior written consent of the individual to whom the record pertains unless the disclosure is authorized by § 261a.12.

§ 261a.12 Exceptions.

The restrictions on disclosure in § 261a.11 do not apply to any disclosure—

(a) To those officers and employees of the Board who have a need for the record in the performance of their duties;

(b) That is required under the Freedom of Information Act (5 U.S.C. 552);

(c) For a routine use listed with respect to a designated system of records;

(d) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13 of the United States Code;

(e) To a recipient who has provided the Board with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(f) To the National Archives of the United States as a record that has sufficient historical or other value to warrant its continued preservation by the United States government, or for evaluation by the administrator of General Services or his designee to determine whether the record has such value;

(g) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Board specifying the particular portion desired and the law enforcement activity for which the record is sought;

(h) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(i) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(j) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(k) Pursuant to the order of a court of competent jurisdiction; or

(l) To a consumer reporting agency in accordance with 31 U.S.C. 3711(e).

Subpart D—Exempt Records

§ 261a.13 Exemptions.

(a) *Information compiled for civil action.* Nothing in this part shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(b) *Law enforcement information.* Pursuant to section (k)(2) of the Privacy Act of 1974 (5 U.S.C. 552a(k)(2)), the Board has deemed it necessary to exempt certain designated systems of records maintained by the Board from the requirements of the Privacy Act concerning access to accountings of disclosures and to records, maintenance of only relevant and necessary information in files, and certain publication provisions, respectively, 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f), and §§ 261a.5, 261a.7, and 261a.8. Accordingly, the following designated systems of records are exempt from these provisions, but only to the extent that they contain investigatory materials compiled for law enforcement purposes:

(1) BGFRS–1 Recruiting and Placement Records
(2) BGFRS–4 General Personnel Records
(3) BGFRS–5 EEO Discrimination Complaint File
(4) BGFRS–9 Consultant and Staff Associate File
(5) BGFRS–21 Supervisory Tracking and Reference System
(6) BGFRS/OIG–1 OIG Investigatory Records
(7) BGFRS–31 Protective Information System
(8) BGFRS–32 Visitor Log

(c) *Confidential references.* Pursuant to section (k)(5) of the Privacy Act of 1974 (5 U.S.C. 552a(k)(5)), the Board has deemed it necessary to exempt certain designated systems of records maintained by the Board from the requirements of the Privacy Act concerning access to accountings of disclosures and to records, maintenance of only relevant and necessary information in files, and certain publication provisions, respectively 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f), and §§ 261a.5, 261a.7, and 261a.8. Accordingly, the following systems of records are exempt from these provisions, but only to the extent that they contain investigatory material compiled to determine an individual's suitability, eligibility, and qualifications for Board employment or access to classified information, and the disclosure of such material would reveal the identity of a source who furnished information to the Board under a promise of confidentiality.

(1) BGFRS–1 Recruiting and Placement Records
(2) BGFRS–4 General Personnel Records
(3) BGFRS–9 Consultant and Staff Associate File
(4) BGFRS–10 General File on Board Members
(5) BGFRS–11 Official General Files
(6) BGFRS–15 General Files of Federal Reserve Agents, Alternates and Representatives at Federal Reserve Banks
(7) BGFRS/OIG–2 OIG Personnel Records
(8) BGFRS–25 Multi–Rater Feedback Records

(d) *Criminal law enforcement information.* Pursuant to 5 U.S.C. 552a(j)(2), the Board has determined that portions of the OIG Investigatory Records (BGFRS/OIG–1) shall be exempt from any part of the Privacy Act (5 U.S.C. 552a), except the provisions regarding disclosure, the requirement to keep an accounting, certain publication requirements, certain requirements regarding the proper maintenance of systems of records, and the criminal penalties for violation of the Privacy Act, respectively, 5 U.S.C. 552a(b), (c)(1), and (2), (e)(4)(A) through (F), (e)(6), (e)(7), (e)(9), (e)(10), (e)(11) and (i). This designated system of records is maintained by the OIG, a Board component that performs as its principal function an activity pertaining to the enforcement of criminal laws. The exempt portions of the records consist of—

(1) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders;

(2) Information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or

(3) Reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

By order of the Board of Governors of the Federal Reserve System, June 1, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–12727 Filed 6–4–04; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 040521151–4151–01]

RIN 0691–AA56

International Services Surveys: BE–22, Annual Survey of Selected Services Transactions With Unaffiliated Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice sets forth the proposed rule that revises the reporting requirements for the BE–22, Annual Survey of Selected Services Transactions with Unaffiliated Foreign Persons.

The BE–22 survey is conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act. The data are needed to compile the U.S. international transactions, national income and product, and input-output accounts; support U.S. trade policy initiatives; assess U.S. competitiveness in international trade in services; and improve the ability of U.S. businesses to identify and evaluate market opportunities.

The proposed rule changes the services covered by the survey. Specifically, the BE–22 annual survey will no longer cover the services that are covered by the new BE–25, Quarterly Survey of Transactions Between U.S. and Unaffiliated Foreign Persons in Selected Services and in Intangible Assets.

DATES: Comments on this proposed rule will receive consideration if submitted in writing on or before August 6, 2004.

ADDRESSES: Direct all written comments to the Office of the Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230. To assure that comments are received in a timely manner, please consider using one of the following delivery methods: (1) Fax to (202) 606–5318, (2) deliver by courier to U.S. Department of Commerce, Bureau of Economic Analysis (BE–50), Shipping and Receiving Section, room M–100, 1441 L Street, NW., Washington, DC 20005, or (3) e-mail to *obie.whichard@bea.gov*. Comments received will be available for public inspection in room 7006, 1441 L Street, NW., between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Obie G. Whichard, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9800.

SUPPLEMENTARY INFORMATION: This proposed rule amends 15 CFR Part 801 by revising Section 801.9(b)(6)(ii) to set forth revised reporting requirements for the BE–22, Annual Survey of Selected Services Transactions with Unaffiliated Foreign Persons. The survey is conducted by the BEA, U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act (Pub. L. 94–472, 90 Stat. 2059, 22 U.S.C. 3101–3108). Section 4(a) of the Act (22 U.S.C. 3103(a)) provides that the President shall, to the extent he deems necessary and feasible, conduct a regular data collection program to secure current information related to international investment and trade in services and publish for the use of the general public and the United States Government agencies periodic, regular, and comprehensive statistical information collected pursuant to this subsection. In Section 3 of Executive Order 11961, as amended by Executive Order 12518, the President delegated the authority under the Act as concerns international trade in services to the

Secretary of Commerce, who has redelegated it to BEA.

The BE–22 is an annual survey of selected services transactions with unaffiliated foreign persons. The data are needed to compile the U.S. international transactions, national income and product, and input-output accounts; support U.S. trade policy initiatives; assess U.S. competitiveness in international trade in services; and improve the ability of U.S. businesses to identify and evaluate market opportunities.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

Executive Order 13132

This proposed rule does not contain policies with Federalism implications as that term is defined in E.O. 13132.

Paperwork Reduction Act

This proposed rule contains a collection of information requirement subject to the Paperwork Reduction Act (PRA) and has been submitted to the Office of Management and Budget for review under the PRA.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection displays a currently valid OMB Control Number. The OMB number for the BE–22 is 0608–0060; the collection will display this control number.

The survey, as proposed, is expected to result in the filing of reports from approximately 800 respondents. The respondent reporting burden for this collection of information is estimated to vary from less than four hours to 300 hours, with an overall average burden of 11.5 hours. This includes time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total respondent burden of the survey is estimated at about 9,200 hours (800 responses times 11.5 hours average burden).

Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information will have practical utility; (b) the accuracy of the burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Comments should be addressed to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and either faxed (202–395–7245) or e-mailed (*pbugg@omb.eop.gov*) to the Office of Management and Budget, O.I.R.A. (Attention PRA Desk Officer for BEA).

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities. While the survey does not collect data on total sales or other measures of the overall size of businesses that respond to the survey, historically the respondent universe has been comprised mainly of major U.S. corporations. With the exemption level for the survey being $1 million in covered receipts or payments, the reporting threshold for this survey is set at a level that will exempt most small businesses from reporting. Of those smaller businesses that must report, most will tend to have specialized operations and activities and thus will be likely to report only one type of service transaction, often limited to transactions with a single partner country; therefore, the burden on them can be expected to be small.

List of Subjects in 15 CFR Part 801

International transactions, Economic statistics, Foreign trade, Penalties, Reporting and recordkeeping requirements.

Dated: May 11, 2004.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA proposes to amend 15 CFR part 801, as follows:

PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS

1. The authority citation for 15 CFR part 801 continues to read as follows:

Authority: 5 U.S.C. 301, 15 U.S.C. 4908, 22 U.S.C. 3101–3108, and E.O. 11961, 3 CFR, 1977 Comp., p. 86 as amended by E.O. 12013, 3 CFR, 1977 Comp., p. 147, E.O. 12318, 3 CFR, 1981 Comp., p. 173, and E.O. 12518, 3 CFR, 1985 Comp., p. 348.

2. Section 801.9(b)(6)(ii) is revised to read as follows:

§ 801.9 Reports required.

* * * * *

(b) * * *

(6) * * *

(ii) *Covered services.* The covered services are: Advertising services; auxiliary insurance services (by non-insurance companies only); educational and training services; financial services (purchases only by non-financial services providers); medical services, inpatient; medical services, other than inpatient; merchanting services (receipts only); mining services; disbursements to fund news-gathering costs of broadcasters; disbursements to fund news-gathering costs of print media; disbursements to fund productions costs of motion pictures; disbursements to fund production costs of broadcast program material other than news; disbursements to maintain government tourism and business promotion offices; disbursements for sales promotion and representation; disbursements to participate in foreign trade shows (purchases only); other trade-related services; performing arts, sports, and other live performances, presentations, and events; primary insurance premiums (payments only); primary insurance losses recovered; sale or purchase of rights to natural resources, and lease bonus payments; use or lease of rights to natural resources, excluding lease bonus payments; waste treatment and depollution services; and other private services (language translation services; salvage services; security services; account collection services; satellite photography and remote sensing/satellite imagery services; space transport (includes satellite launches, transport of goods and people for scientific experiments, and space passenger transport); and transcription services).

* * * * *

[FR Doc. 04–12788 Filed 6–4–04; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201, 208, and 209

[Docket No. 2003N–0342]

Toll-Free Number for Reporting Adverse Events on Labeling for Human Drug Products; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a proposed rule that appeared in the **Federal Register** of April 22, 2004 (69 FR 21778). The document proposed to amend the agency's regulations governing the format and content of labeling for human drug products for which an application is approved under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355). The document published with inadvertent errors. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy and Planning (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 04–9069, appearing on pages 21778 and 21779 in the **Federal Register** of Thursday, April 22, 2004, the following corrections are made:

1. On page 21778, in the third column, in the heading of the document, "[Docket No. 2003N–0324]" is corrected to read [Docket No. 2003N–0342]".

2. On page 21778, in the third column, in the **ADDRESSES** section, in the second line beginning with "identified by", "Docket No. 2003N–0324" is corrected to read "Docket No. 2003N–0342".

3. On page 21779, in the first column, in the **ADDRESSES** section, in the ninth line beginning with "Docket No. 2003N–0324", "Docket No. 2003N–0324" is corrected to read "Docket No. 2003N–0342".

Dated: June 1, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–12841 Filed 6–4–04; 8:45 am]

BILLING CODE 4160–01–S

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Parts 202, 205, 211, and 226

RIN 0412–AA52

Participation by Religious Organizations in USAID Programs

AGENCY: Agency for International Development (USAID).

ACTION: Proposed rule.

SUMMARY: This rule proposes to implement Executive Branch policy that, within the framework of constitutional guidelines, religious (or "faith-based") organizations should be able to compete on an equal footing with other organizations for USAID funding. This proposed rule would revise USAID regulations pertaining to the award of grants, cooperative agreements and contracts awarded for the purpose of administering grant programs to ensure their compliance with this policy and to clarify that faith-based organizations are eligible to participate in programs on the same basis as any other organization, with respect to programs for which such other organizations are eligible.

DATES: Comments must be submitted by August 6, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the: Center for Faith-Based and Community Initiatives, U.S. Agency for International Development, Room 3.09–22, 1300 Pennsylvania Avenue, NW., Washington, DC 20523. Communications should refer to the "proposed rule." You may submit your comments by fax to 202–216–3351 or by e-mail to *fbci@usaid.gov*. A copy of each communication submitted will be available for inspection and copying between 8:30 a.m. and 5:30 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: Michael Magan, Director, Center for Faith-Based and Community Initiatives, USAID, Rm. 3.3.30, 1300 Pennsylvania Ave., NW., Washington, DC 20523; telephone: (202) 712–4080 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Religious (or "faith-based") organizations make an important contribution to the delivery of humanitarian and economic assistance in much of the world. Faith-based organizations acting alone or in partnership with local and national governments, community-based organizations, institutions of higher education, and other private organizations do much good work to meet the pressing needs of countries and their citizens, consistent with the objectives of the U.S. foreign assistance program.

Faith-based non-profit organizations have been implementing humanitarian and development activities for USAID for decades. Nevertheless, USAID seeks to further facilitate the contribution of faith-based and community organizations to increase the reach and effectiveness of its programs. We believe this will strengthen the effort, given priority in the national security strategy of the United States, to respond to the humanitarian and economic development needs of countries worldwide.

President Bush has directed Federal agencies, including USAID, to take steps to ensure that Federal policy and programs are fully open to faith-based and community groups in a manner that is consistent with the Constitution. The Administration believes that such groups possess an under-appreciated ability to meet the needs of disadvantaged people overseas struggling to make a better life, recover from a disaster or live in a free and democratic country. The Administration believes that there should be an equal opportunity for *all* organizations—both religious and nonreligious—to participate as partners in Federal programs.

As part of these efforts, President Bush issued Executive Order 13198 on January 29, 2001. The Order, which was published in the **Federal Register** on January 31, 2001 (66 FR 8499), created Centers for Faith-Based and Community Initiatives in five Cabinet departments—Housing and Urban Development, Health and Human Services, Education, Labor, and Justice. The Executive Order charged the Centers to identify and eliminate regulatory, contracting, and other programmatic obstacles to the participation of faith-based and community organizations in the provision of social services by their Departments. On December 12, 2002, President Bush issued Executive Order 13280. That Order, published in the **Federal Register** on December 16, 2002 (66 FR 77145), created Centers in two additional agencies—the United States Agency for International Development and the Department of Agriculture—and charged those Centers with duties similar to those set forth in Executive Order 13198. On December 12, 2002, President Bush also issued Executive Order 13279, published in the **Federal Register** on December 12, 2002 (67 FR

77141). That Executive Order charges Executive Branch agencies to ensure equal protection of laws to faith-based and community groups that apply for funds to meet and administer social service programs domestically and abroad. President Bush called for an end to discrimination against faith-based organizations and, consistent with the First Amendment to the United States Constitution, ordered implementation of these policies throughout the Executive Branch, including, among other things, allowing organizations to retain their religious autonomy over their internal governance and composition of boards, and over their display of religious art, icons, scriptures, or other religious symbols, when participating in government-funded programs. President Bush directed each Executive Branch agency, including USAID, to implement these policies. This proposed rule is part of USAID's efforts to fulfill its responsibilities under these Executive Orders.

II. This Proposed Rule

A. Purpose of Proposed Rule

Consistent with the President's initiative, this proposed rule would revise USAID's regulations to ensure that there are no unwarranted barriers to the equal participation of faith-based organizations in USAID's programs. The objective of this proposed rule is to ensure that USAID's programs are open to all qualified organizations, regardless of their religious character, and to establish clearly the proper uses to which funds may be put, and the conditions for receipt of funding. In addition, this proposed rule is designed to ensure that the implementation of USAID's programs is conducted in a manner consistent with the requirements of the Constitution, including the President's Article II responsibilities to conduct the foreign affairs of the nation and to act as its sole representative in international relations.

B. USAID Regulations Amended by Proposed Rule

This rule proposes to revise in its entirely 22 CFR part 205, Payments to and on Behalf of Participants in Nonmilitary Economic Development Training Programs. It's new title would be "Participation by Religious Organizations in USAID Programs."

This rule also proposes to amend the following USAID regulations:

1. 22 CFR part 202, Overseas Shipment of Supplies by Voluntary Non-Profit Relief Agencies.

2. 22 CFR part 211, Transfer of Commodities for Food Use in Disaster Relief, Economic Development, and Other Assistance.

3. 22 CFR part 226, Administration of Assistance Awards to U.S. Non-Government Organizations.

C. Proposed Regulatory Amendments to Title 22

The revised part 205 will apply to all Federal financial assistance (including grants, cooperative agreements and contracts that administer grant programs) awarded by USAID. Award documentation for such Federal financial assistance will include standard clauses that incorporate the standards of part 205 and USAID internal directives will highlight, explain, and incorporate part 205 by reference. The rule also proposes to make corresponding changes to existing parts 202, 211 and 226 of 22 CFR that relate to aspects of Federal financial assistance programs administered by USAID.

1. *Participation by religious organizations in USAID programs.* The proposed rule would make clear that organizations are eligible to participate in USAID programs without regard to their religious character or affiliation, and that organizations may not be excluded from the competition for USAID assistance awards or sub-awards simply because they are religious. Specifically, religious organizations are eligible to compete for funding on the same basis, and under the same eligibility requirements, as all other nonprofit organizations. The Federal government and intermediary organizations administering USAID funds are prohibited from discriminating for or against organizations on the basis of religious character or affiliation in the selection of service providers. Nothing in this rule precludes those administering USAID funded programs from accommodating religious organizations in a manner consistent with the Religion Clauses of the First Amendment to the Constitution, as they have been interpreted to apply in the domestic context.

2. *Inherently religious activities.* The proposed rule describes the requirements applicable to all recipient and sub-recipient organizations regarding the use of USAID funds for inherently religious activities. Specifically, a participating organization may not use direct financial assistance [1] from USAID to support inherently religious activities, such as worship, religious instruction, or proselytization. If the organization engages in such activities, the activities must be offered separately, in time or location, from the programs or services funded with direct USAID assistance, and participation must be voluntary for the beneficiaries of the USAID-funded programs or services. This requirement ensures that direct financial assistance from USAID to religious organizations is not used to support inherently religious activities. Such assistance may not be used, for example, to conduct worship services, prayer meetings or any other activity that is inherently religious.

This restriction does not mean that an organization that receives USAID funds cannot engage in inherently religious activities. It simply means that such an organization cannot fund these activities with direct financial assistance from USAID. Thus, faith-based organizations that receive direct financial assistance from USAID must take steps to separate, in time or location, their inherently religious activities from the direct USAID-funded services that they offer.

In addition, the proposed rule clarifies that the legal restrictions applicable to religious programs within correctional facilities will sometimes be different from the legal restrictions that apply to other USAID programs, on account of the fact that the degree of government control over correctional environments sometimes warrants affirmative steps by prison officials, in the form of chaplaincies and similar programs, to ensure that prisoners have access to opportunities to exercise their religion in the prison.

3. *Independence of religious organizations.* The proposed rule clarifies that a religious organization that participates in USAID programs will retain its independence and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct financial assistance from USAID to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, a faith-based organization may use space in its facilities to provide USAID-funded services, without

[1] As used in this proposed rule, the terms "direct USAID assistance" or "direct financial assistance from USAID" refers to direct funding within the meaning of the Establishment Clause of the First Amendment as it has been interpreted to apply in the domestic context. For example, direct USAID assistance may mean that the government or an intermediate organization with similar duties as a governmental entity under a particular USAID program selects an organization and enters a grant relationship with the organization for provision of needed services. In contrast, many indirect funding scenarios place the choice of service provider in the hands of a beneficiary, and then pay for the cost of that service through a voucher, certificate, or other similar means of payment.

removing religious art, icons, scriptures, or other religious symbols. In addition, a USAID-funded religious organization may retain religious terms in its organization's name, select its board members and otherwise govern itself on a religious basis, and include religious references in its organization's mission statements and other governing documents.

4. *Use of USAID funds for acquisition, construction, or rehabilitation of structures.* The proposed rule clarifies that USAID funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under the specific USAID program. Where a structure is used for both eligible and inherently religious activities, the proposed rule clarified that USAID funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities. USAID funds may not be used for acquisition, construction, or rehabilitation of sanctuaries, chapels, or any other rooms that a religious congregation that is a recipient or sub-recipient of USAID assistance primarily uses as a place of worship.

5. *Nondiscrimination in providing assistance.* The proposed rule clarifies that an organization that receives direct financial assistance from USAID shall not, in providing program assistance, discriminate against a program beneficiary or potential program beneficiary on the basis of religion or religious belief. Accordingly, religious organizations, in providing services directly funded in whole or in part by USAID, may not discriminate against current or prospective program beneficiaries on the basis of religion or religious belief.

6. *Assurance requirements.* This rule proposes to direct the removal of those provisions of USAID's agreements, covenants, memoranda of understanding, policies, or regulations that require only USAID-funded religious organizations to provide assurances that they will not use monies or property for inherently religious activities. All organizations that participate in USAID programs, including religious ones, must carry out eligible activities in accordance with all program requirements and other applicable requirements governing the conduct of USAID-funded activities, including those prohibiting the use of direct financial assistance from USAID to engage in inherently religious activities. In addition, to the extent that provisions of USAID's agreements, covenants, policies, or regulations disqualify religious organizations from participating in USAID's programs because they are motivated or influenced by religious faith to provide social services, or because of their religious character or affiliation, the proposed rule removes that restriction, which is not required by governing law.

7. *National Security Waiver.* The proposed rule also permits the Secretary of State to waive all or any part of the rule, on a case-by-case basis, where the Secretary determines that such waiver is necessary to further the national security or foreign policy interests of the United States.

III. Findings and Certifications

Executive Order 12866—Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review.* OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order) and, accordingly, has reviewed the rule.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This proposed rule does not impose any Federal mandates on any State, local, or tribal governments, or the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

The USAID Administrator, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. The proposed rule would not impose any new costs, or modify existing costs, applicable to USAID grantees. Rather, the purpose of the proposed rule is to remove prohibitions that currently restrict the equal participation of religious or religiously affiliated organizations (large and small) in USAID programs. Notwithstanding USAID's determination that this rule will not have a significant economic effect on a substantial number of small entities, USAID specifically invites comments regarding any less burdensome alternatives to this rule that will meet USAID's objectives as described in this preamble.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance program numbers for the programs affected by this rule are 98.001, 98.002, 98.003, 98.004, 98.005, 98.006, 98.007, 98.008, 98.009.

List of Subjects

22 CFR Part 202

Foreign aid, Grant programs, Nonprofit organizations.

22 CFR Part 205

Foreign aid, Grant programs, Nonprofit organizations.

22 CFR Part 211

Agricultural commodities, Disaster assistance, Food assistance programs, Foreign aid, Grant programs, Nonprofit organizations, Reporting and recordkeeping requirements.

22 CFR Part 226

Accounting, Colleges and universities, Foreign aid, Grant programs, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, USAID proposes to amend chapter II of title 22 of the Code of Federal Regulations as follows:

PART 202—OVERSEAS SHIPMENT OF SUPPLIES BY VOLUNTARY NON–PROFIT RELIEF AGENCIES

1. The authority citation for part 202 revised to read as follows:

Authority: 22 U.S.C. 2381(a).

2. Add § 202.10 to read as follows:

§ 202.10 Participation by faith-based organizations.

The procedures established under this part shall be administered in compliance with the standards set forth in part 205, Participation by Religious Organizations in USAID Programs, of this chapter.

3. Revise part 205 to read as follows:

PART 205—PARTICIPATION BY RELIGIOUS ORGANIZATIONS IN USAID PROGRAMS

Authority: 22 U.S.C. 2381(a).

§ 205.1 Grants and cooperative agreements.

(a) Religious organizations are eligible, on the same basis as any other Organization to participate in any

USAID program for which they are otherwise eligible. In the selection of service providers, neither USAID nor entities that make and administer sub-awards of USAID funds shall discriminate for or against an organization on the basis of the organization's religious character or affiliation. As used in this section, the term "program" refers to federally funded USAID grants and cooperative agreements, including sub-grants and sub-agreements. The term also includes grants awarded under contracts that have been awarded by USAID for the purpose of administering grant programs. As used in this section, the term "grantee" includes a recipient of a grant or a signatory to a cooperative agreement, as well as sub-recipients of USAID assistance under grants, cooperative agreements and contracts.

(b) Organizations that receive direct financial assistance from USAID under any USAID program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services directly funded with direct financial assistance from USAID. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded with direct financial assistance from USAID, and participation must be voluntary for beneficiaries of the programs or services funded with such assistance. These restrictions on inherently religious activities do not apply to programs where USAID funds are provided to chaplains to work with inmates in prisons, detention facilities, or community correction centers, or where USAID funds are provided to religious or other organizations for programs in prisons, detention facilities, or community correction centers, in which such organizations assist chaplains in carrying out their duties.

(c) A religious organization that participates in USAID-funded programs or services will retain its independence and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct financial assistance from USAID to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, a religious organization that receives financial assistance from USAID may use space in its facilities, without removing religious art, icons, scriptures, or other religious symbols. In addition, a religious organization that receives financial assistance from USAID retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(d) USAID funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. USAID funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious activities, USAID funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to USAID funds in this part. Sanctuaries, chapels, or other rooms that a USAID-funded religious congregation primarily uses as a place of worship, however, are ineligible for USAID-funded improvements. Disposition of real property after the term of the grant, or any change in use of the property during the term of the grant, is subject to government-wide regulations governing real property disposition. (*See* 22 CFR Part 226).

(e) An organization that participates in programs funded by financial assistance from USAID shall not, in providing services, discriminate against a program beneficiary or potential program beneficiary on the basis of religion or religious belief.

(f) No grant document, contract, agreement, covenant, memorandum of understanding, policy, or regulation that is used by USAID shall require only religious organizations to provide assurances that they will not use monies or property for inherently religious activities. Any such restrictions shall apply equally to religious and secular organizations. All organizations that participate in USAID programs, including religious ones, must carry out eligible activities in accordance with all program requirements and other applicable requirements governing the conduct of USAID-funded activities, including those prohibiting the use of direct financial assistance from USAID to engage in inherently religious activities. No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by USAID shall disqualify religious organizations from participating in USAID's programs because such organizations are motivated or influenced by religious faith to provide social services, or because of their religious character or affiliation.

(g) A religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in § 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-1, is not forfeited when the organization receives financial assistance from USAID.

(h) Many USAID grant programs require an organization to be a "nonprofit organization" in order to be eligible for funding. Individual solicitations that require organizations to have nonprofit status will specifically so indicate in the eligibility section of a solicitation. Grantees should consult with the appropriate USAID program office to determine the scope of any applicable requirements. In USAID programs in which an applicant must show that it is a nonprofit organization, other than programs which are limited to registered Private and Voluntary Organizations, the applicant may do so by any of the following means:

(1) Proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code;

(2) A statement from a state taxing body or the state secretary of state certifying that:

(i) The organization is a nonprofit organization operating within the State; and

(ii) No part of its net earnings may lawfully benefit any private shareholder or individual;

(3) A certified copy of the applicant's certificate of incorporation or similar document that clearly establishes the nonprofit status of the applicant; or

(4) Any item described in paragraphs (b)(1) through (3) of this section if that item applies to a state or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

(i) The Secretary of State may waive the requirements of this section in whole or in part, on a case-by-case basis, where the Secretary determines that such waiver is necessary to further the national security or foreign policy interests of the United States.

PART 211—TRANSFER OF FOOD COMMODITIES FOR FOOD USE IN DISASTER RELIEF, ECONOMIC DEVELOPMENT, AND OTHER ASSISTANCE

4. The authority citation for part 211 is revised to read as follows:

Authority: 7 U.S.C. 1726a(c).

5. Add § 211.13 to read as follows:

§ 211.13 Participation by religious organizations.

The funds provided under this part shall be administered in compliance with the standards set forth in part 205, Participation by Religious Organizations in USAID Programs, of this chapter.

PART 226—ADMINISTRATION OF ASSISTANCE AWARDS TO U.S. NON-GOVERNMENTAL ORGANIZATIONS

6. The authority citation for part 226 is revised to read as follows:

Authority: 22 U.S.C. 2381(a).

7. Amend § 226.1 to add the following text at the end of the section:

§ 226.1 Purpose and applicability.

* * * This part shall be administered in compliance with the standards set forth in part 205, Participation by Religious Organizations in USAID Programs, of this chapter.

Dated: May 28, 2004.

Andrew S. Natsios,

USAID Administrator.

[FR Doc. 04–12654 Filed 6–4–04; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. H011G]

RIN No. 1218–AB89

Announcement of Stakeholders Meetings for Hearing Conservation Program for Construction Workers

AGENCY: Occupational Safety and Health Administration (OSHA); Department of Labor.

ACTION: Scheduling of stakeholder meetings.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is inviting the public to participate in informal stakeholder meetings on a Hearing Conservation Program for Construction Workers. These planned meetings will continue OSHA's information collection efforts and will add to the information obtained in the stakeholder meetings conducted in Chicago, Illinois on March 24 and 25, 2004. In this meeting, stakeholders suggested that OSHA consider the advantages of addressing high noise exposure on a task by task basis. The Agency invites the public to address issues regarding a task-based approach to implementing hearing conservation programs, including exposure assessment and the use of hearing protection devices, to reduce worker exposures to noise in the construction industry.

DATES: *Stakeholder meetings.* Stakeholder meetings will be held on July 21st and 22nd, 2004 at the Hyatt Dulles Hotel, 2300 Dulles Corner Boulevard, Herndon, Virginia (telephone 703–713–1234, fax 703–713–3410). Both meetings will begin at 8:30 a.m. and end at 12:30 p.m. Interested parties are requested to notify OSHA of their intent to participate in one of the stakeholder meetings by July 6, 2004. Also, stakeholders who wish to make a presentation of task-specific exposure data, of no longer than 10-minutes, must notify OSHA by July 6th. Each half day session will have the same agenda and format. Stakeholders are encouraged to attend only one half-day meeting.

ADDRESSES: If you wish to participate in a stakeholder meeting you must notify OSHA by e-mail, facsimile, or mail, as set forth below, giving your name, affiliation, contact information, the stakeholder session you plan to attend, and whether you wish to be an active participant, presenter, or an observer.

Electronic: OSHA encourages you to submit your notice of intent to attend a stakeholder meeting via e-mail to *garner.christie@dol.gov*.

Facsimile: You may fax your notice of intent to attend a stakeholder meeting to Christie Garner at (202) 693–1678.

Mail: You may also notify OSHA of your intent to attend a stakeholder meeting, by mail, to Christie Garner, Directorate of Standards and Guidance, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3718, 200 Constitution Ave., NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Michael Seymour, Office of Physical Hazards, Directorate of Standards and Guidance, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3718, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–1950.

SUPPLEMENTARY INFORMATION: OSHA issued a section 6(b)(5) health standard mandating a comprehensive hearing conservation program for noise-exposed workers in general industry in 1983. However, no rule was promulgated to cover workers in the construction industry. Studies show that as many as 750,000 construction workers are currently exposed to noise levels of 85 dBA or greater at work. The largest number of worker exposures to excessive noise occurs during road construction, carpentry, and concrete work. International experience and data show that hearing conservation programs in the construction industry can be effective in reducing occupational hearing loss.

On August 5, 2002, OSHA published an Advance Notice of Proposed Rulemaking (ANPR) addressing noise-induced hearing loss among workers in the construction industry, current practices to reduce this loss, and additional approaches and protection that could be used to prevent such loss in the future (67 FR 50610). The Agency has reviewed the forty-seven comments received in response to the ANPR and other available information.

OSHA held stakeholder meetings in Chicago, Illinois on March 24 and 25, 2004. In that meeting stakeholders discussed an approach to implementing hearing conservation programs based on the knowledge of exposure levels in common construction tasks. They noted that such an approach would simplify putting hearing conservation programs into practice. The stakeholders sought a simple and flexible system that would require minimal exposure monitoring and expertise by construction employers.

Stakeholder Meetings

OSHA requests the public to address the following issues regarding task-based approaches to hearing conservation programs:

- What are the common tasks in construction where significant noise exposures occur? Can such tasks be characterized by job title, type of construction, activity, type of equipment used, or other characteristics?
- Are data available for most tasks sufficient to characterize:
  - Anticipated exposures,
  - Duration,
  - Noise perimeter zones,
  - Current use of hearing protection?
- What are the critical data elements needed to sufficiently characterize typical tasks in construction?

The stakeholder meetings will be an opportunity for informal discussion and will allow for the exchange of data, ideas, and points of view. The first two

hours of each meeting will be an informal discussion of the above issues. The remainder of the meeting will be devoted to 10-minute presentations by stakeholders who wish to present exposure data related to specific construction tasks. Participants are not expected to prepare and present formal testimony. The Agency is interested in reviewing exposure data and hearing first hand from employers and employees in the construction industry their ideas of what can be done to reduce the noise exposures and hearing loss of workers within this industry.

Authority: This notice was prepared under the direction of John L. Henshaw, Assistant Secretary for Occupational Safety and Health. It is issued under sections 4 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657).

Issued at Washington, DC, this 28th day of May, 2004.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 04–12759 Filed 6–4–04; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

RIN 1024–AD13

National Park System Units in Alaska

AGENCY: National Park Service, Interior.

ACTION: Proposed rule; public comment period extension.

SUMMARY: The NPS is extending the public comment period for this Proposed Rule to June 16, 2004. A Notice of the Proposed Rule was published April 2, 2004 (69 FR 17355, RIN 1024–AD13), with a 60-day public comment period originally scheduled from April 2, 2004 to June 1, 2004.

DATES: Comments to be received by June 16, 2004.

ADDRESSES: Send comments by mail to: National Park Service, Regional Director, Alaska Regional Office, 240 West 5th Ave., Anchorage, AK 99501. By e-mail to: *akro_regulations@nps.gov.* By fax to: 907) 644–3805.

FOR FURTHER INFORMATION CONTACT: National Park Service, Victor Knox, Associate Regional Director, Alaska Regional Office, 240 West 5th Ave., Anchorage, AK 99501. Telephone: (907) 644–3501. E-mail: *akro_regulations@nps.gov.* Fax (907) 644–3816.

Dated: June 2, 2004.

Kayci Cook Collins,

Alaska Desk Officer.

[FR Doc. 04–12816 Filed 6–4–04; 8:45 am]

BILLING CODE 4312–52–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ID–03–003; FRL–7670–3]

Clean Air Act Approval and Promulgation of State Implementation Plans; Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve revisions related to open burning and crop residue disposal requirements in Idaho's State Implementation Plan (SIP). The Idaho Department of Environmental Quality (IDEQ) submitted these revisions to EPA for inclusion in the Idaho SIP on May 22, 2003. These revisions were submitted for the purposes of clarifying existing regulations and complying with section 110 and part D of the Clean Air Act.

DATES: Comments must be received on or before July 7, 2004.

ADDRESSES: Submit your comments, identified by Docket ID No. ID–03–003, by one of the following methods:

A. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the online instructions for submitting comments.

B. E-mail: *r10.aircom@epa.gov*

C. Fax: (206) 553–0110

D. Mail: Office of Air Quality, Attn: Environmental Protection Agency, Attn: Donna Deneen, Mailcode: OAQ–107, 1200 Sixth Avenue, Seattle, WA 98101.

E. Hand Delivery: Environmental Protection Agency Region 10, Attn: Donna Deneen (OAQ–107), 1200 Sixth Avenue, Seattle, WA 98101, 9th floor. Such deliveries are only accepted during EPA's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. ID–03–003. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov, or e-mail. The Federal regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in an index. Although listed in the index, some information may not be publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Publicly available docket materials are available in hard copy at EPA Region 10, Office of Air Quality, 1200 Sixth Avenue, Seattle, Washington 98101. A copy of the file, as it exists on the date of proposal, is also available for public viewing at EPA's Idaho Operations Office at EPA Region 10, Idaho Operations Office, 1435 N. Orchard St., Boise, ID 83706. EPA is open Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays. Please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection.

FOR FURTHER INFORMATION CONTACT: Donna Deneen, Office of Air Quality, Region 10, OAQ–107, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98101; phone: (206) 553–6706; fax number: (206) 553–0110; e-mail address: *deneen.donna@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background Information

1. What Revisions to the Idaho SIP Are We Proposing To Approve?

We are proposing to approve revisions to the portion of Idaho's State Implementation Plan relating to open burning found at IDAPA 58.01.01.600 through 617. These revisions were submitted to EPA by the Director of the Idaho Department of Environmental Quality on May 22, 2003. The revisions include modifications of existing language, the addition of two clarifying provisions, and the deletion of a never-before-used provision. More discussion on these revisions is provided below.

2. Why Are We Proposing To Approve These Revisions?

We are proposing to approve these revisions related to open burning in Idaho's SIP because they serve to clarify and strengthen the State's existing SIP and are consistent with Clean Air Act requirements. Of the provisions that IDEQ modified (*i.e.*, not added or deleted), all are either editorial revisions, clarifications of existing provisions, or process revisions. By the nature of these types of modifications, they have no substantive impact on rule requirements and, therefore, are approvable.

IDEQ added two clarifying sections to its rules. The first is section 58.01.01.603.02—Emergency Authority. This section provides that IDEQ has the authority to require immediate abatement of open burning in cases of emergency requiring immediate action to protect human health or safety. This provision clarifies the existing authority provided in Idaho Code Chapter 39 Title 1 (and approved at 68 FR 2217, January 16, 2003) to require immediate abatement of air pollution in emergency cases. Idaho Code section 39–112. Section 58.01.01.603.02 is approvable because it clarifies and therefore strengthens the existing federally-approved requirements.

IDEQ added a second clarifying section at 58.01.01.617. This section clarifies that crop residue disposal is an allowable category of open burning. The current Idaho SIP states that "The purpose of section 606 through 616 is to establish categories of open burning that are allowed when done according to prescribed conditions. Unless specifically exempted each category in section 606 through 616 is subject to all of sections 600 through 604." IDAPA 58.01.01.606. The new clarifying section at 58.01.01.617 is intended to clarify that the open burning of crop residue on fields where the crops were grown is also an allowable form of open burning if conducted in accordance with Idaho's Smoke Management and Crop Residue Disposal Act, Chapter 48, Title 22, Idaho Code, and the rules promulgated thereto, IDAPA 02.06.16. "Crop Residue Disposal Rules." As explained below, IDEQ has never prohibited open burning of crop residue or included regulation of it as part of a control strategy. As a result, this new provision is not a substantive change from existing provisions or the longstanding practice to burn crop residue within the State of Idaho.

The existing federally-approved open burning requirements for Idaho do not specifically address the open burning of crop residue. As explained in a letter from the State of Idaho Office of the Attorney General, the Smoke Management Act (SMA) was enacted in 1985. At this time the legislature found that "current knowledge and technology support the practice of burning grass seed fields to control disease, weeds and pests and the practice of burning cereal crop residues where soil has inadequate decomposition capacity. It is the intent of the legislature to promote those agricultural activities currently relying on field burning and minimize any potential effects on air quality. It is further the intent of the legislature that the department shall not promulgate rules and regulations relating to a smoke management plan, but rather that the department cooperate with the agricultural community in establishing a voluntary smoke management program." Idaho Code 39–2301 (1985). In the 1999 Smoke Management and Crop Residue Disposal Act, the Idaho legislature transferred the SMA responsibilities from IDEQ to the Idaho Department of Agriculture. The Idaho legislature again found that "the current knowledge and technology support the practice of burning crop residue to control disease, weeds, pests and to enhance crop rotations." Idaho Code Chapter 48 Smoke Management and Crop Residue Disposal, 22–4801 (1999). The Act specifically provided that "The open burning of crop residue grown in agricultural fields shall be an allowable form of open burning when the provisions of this chapter and any rules promulgated pursuant thereto and the environmental protection and health act and any rules promulgated thereto are met and when no other alternatives to burning are available* * *" Idaho Code section 22–4803(1) (1999). The same language remains in the 2003 Smoke Management and Crop Residue Disposal Act. Idaho Code section 22–4801 (2003). The Crop Residue Disposal Rules are located at IDAPA 02.06.16.

In 2003, to avoid potential confusion and make clear that the State's general prohibition of open burning is not intended to apply to crop residue, Idaho added section 58.01.01.617 to the IDEQ's general open burning regulations promulgated under the Environmental Protection and Health Act. The letter from the Idaho Attorney General's Office explained that by explicitly stating that burning of crop residue is an allowable form of open burning, the State intended to clarify, and not relax, the existing regulations in Idaho concerning crop residue burning. Therefore, the new section is approvable.

Finally, IDEQ deleted one section, section 58.01.01.604—Alternatives to Open Burning, from its rules. Under this provision, two years from the date an economical and reasonable alternative to a specific usage of open burning is approved by the Director of IDEQ, that usage of open burning is no longer allowed. This provision conflicts with the newer provision in the 2003 Smoke Management and Crop Residue Disposal Act which provides that open burning of crop residue is allowed only after the Director of the Idaho Department of Agriculture determines there are no economically viable alternatives to burning. Idaho Code section 22–4803. Under IDAPA section 58.01.01.604, the approval of alternatives is discretionary and to date has not been used. While EPA continues to encourage alternatives to open burning of crop residue, the removal of this provision has no substantive impact on existing federally-approved requirements. Therefore, we propose to approve the removal of section 58.01.01.604 from the Idaho SIP.

3. Summary of Proposed Action

EPA is proposing to approve all of the amendments to the Rules for the Control of Air Pollution in Idaho, section 58.01.01.600 through section 58.01.01.617, as submitted on May 22, 2003.

II. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements

beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 27, 2004.

L. John Iani,

Regional Administrator, Region 10.

[FR Doc. 04–12700 Filed 6–4–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA151–5077; FRL–7671–2]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; VOC Emission Standards for AIM Coatings in the Metropolitan Washington, DC Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision pertains to the volatile organic compound (VOC) emission standards for architectural and industrial maintenance (AIM) coatings in the Northern Virginia portion of the Metropolitan Washington, DC ozone nonattainment area (Northern Virginia Area).

DATES: Written comments must be received on or before July 7, 2004.

ADDRESSES: Submit your comments, identified by VA151–5077 by one of the following methods:

A. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: morris.makeba@epa.gov.*

C. *Mail:* Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. VA151–5077. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION: On February 23, 2004, the Commonwealth of Virginia submitted a formal revision to its SIP. The SIP revision consists of four new regulations to 9 VAC 5, Chapter 40, amendments to one existing article of 9 VAC 5, Chapter 40 and amendments to one article of 9 VAC Chapter 20.

The new regulations are:

(1) 9 VAC 5 Chapter 40, New Article 42—"Emission Standards for Portable Fuel Container Spillage in the Northern Virginia Volatile Organic Compound Emissions Control Area" ("Rule 4–42"). (9 VAC 5–40–5700 to 9 VAC 5–40–5770).

(2) 9 VAC 5, Chapter 40, New Article 47—"Emission Standards for Solvent Metal Cleaning Operations in the Northern Virginia Volatile Organic Compound Emissions Control Area" ("Rule 4–47")—(9 VAC 5–40–6820 to 9 VAC 5–40–6970).

(3) 9 VAC 5, Chapter 40, New Article 48—"Emission Standards for Mobile Equipment Repair and Refinishing Operations in the Northern Virginia Volatile Organic Compound Emission Control Area" ("Rule 4–48") (9 VAC 5–40–6970 to 9 VAC 5–40–7110).

(4) 9 VAC 5, Chapter 40, New Article 49—"Emission Standards for Architectural and Industrial Maintenance Coatings in the Northern Virginia Volatile Organic Compound Emissions Control Area" ("Rule 4–49") (9 VAC 5–40–7120 to 9 VAC 5–40–7230).

The February 23, 2004 submittal, also included amendments to 9 VAC 5–20–21 "Documents incorporated by reference" to incorporate by reference additional test methods and procedures needed for Rule 4–42 or Rule 4–49, and, also amendments to section 9 VAC 5–40–3260 of Article 24 "Emission Standards For Solvent Metal Cleaning Operations Using Non-Halogenated Solvents" ("Rule 4–24").

This action concerns only Rule 4–49 of the February 23, 2004 SIP revision and the amendments and additions to 9 VAC 5–20–21.E.1.a.(7), E.4.a.(12) through (17), E.10, E.11, and E.13. The remaining portions of the February 23, 2004 SIP revision submittal, which include Rule 4–42, Rule 4–47, Rule 4–48, the amendment to 9 VAC 5–40–3260, and the addition of subdivision E 12 to 9 VAC 5–20–21, will be the subject of separate rulemaking actions.

I. Background

On January 24, 2003, EPA made a finding that the Metropolitan Washington, DC ozone nonattainment area (DC Area) failed to attain the ozone standard by November 15, 1999, and reclassified the area from "serious" to "severe" for one-hour ozone. As a severe nonattainment area, the DC Area must now meet the requirements of section 182(d) of the CAA, and attain the one-hour ozone standard by November 15, 2005. As a result of the reclassification of the DC Area to severe nonattainment, the Northern Virginia Area must implement additional measures for failure to attain the ozone standard and submit SIP revisions showing ROP of three percent reductions for each year after 1999 until the new statutory attainment date of November 15, 2005, a revised attainment demonstration and revisions to the contingency plan.

As part of Virginia's strategy to meet its portion of emission reductions keyed to the post-1999 ROPs, the 2005 attainment demonstration, and/or the contingency plan, the state adopted new measures to control volatile organic compound (VOC) emissions from four additional source categories, including a regulation to control emissions from AIM coatings. The standards and requirements contained in Virginia's AIM rule are based on the Ozone Transport Commission (OTC) model rule. The OTC developed control measures into model rules for a number of source categories and estimated emission reduction benefits from implementing those model rules. The OTC AIM coatings model rule was based on the existing rules developed by the California Air Resources Board, which were analyzed and modified by the OTC workgroup to address VOC reduction needs in the Ozone Transport Region (OTR).

II. Summary of SIP Revision

The Northern Virginia Area includes the counties of Arlington, Fairfax, Loudon, Prince William; and cities of Alexandria, Fairfax, Falls Church, Manassas and Manassas Park.

The Virginia AIM Rule applies to any person who supplies, sells, offers for sale, or manufactures any AIM coating for the use in Northern Virginia Area; as well as a person who applies or solicits the application of any AIM coating within the Northern Virginia Area. The rule does not apply to the following: (1) Any AIM coating that is sold or manufactured for use outside of the Northern Virginia Area, or for shipment to other manufacturers for reformulation or repackaging; (2) any aerosol coating product; or (3) any architectural coating that is sold in a container with a volume of one liter (1.057 quarts) or less. The rule sets specific VOC content limits, in grams per liter, for AIM coating categories with a compliance date of January 1, 2005. The rule contains administrative requirements for labeling and reporting. There are a number of test methods that would be used to demonstrate compliance with this rule. Some of these test methods include those promulgated by EPA and published by the South Coast and Bay Area Air Quality Management Districts of California, as well as the American Society for Testing and Materials. The test methods used to test coatings must be the most current approved method at the time testing is performed.

III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege Law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. * * *" The opinion concludes that "[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that "[t]o the

extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

III. Proposed Action

EPA is proposing to approve the Virginia SIP revision submitted on February 23, 2004, for VOC emission standards for AIM coatings in the Northern Virginia Area (Rule 4–49), and also the amendments and additions to 9 VAC 5–20–21. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This proposed rule pertaining to Virginia's AIM rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 27, 2004.

James W. Newsom,

Acting Regional Administrator, Region III.

[FR Doc. 04–12775 Filed 6–4–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 295–0441b; FRL–7667–9]

Revisions to the California State Implementation Plan, Great Basin Unified Air Pollution Control District and Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Great Basin Unified Air Pollution Control District (GBUAPCD) and Ventura County Air Pollution Control District (VCAPCD) portions of the California State Implementation Plan (SIP). The GBUAPCD revisions concern the emission of particulate matter (PM–10) from open fires and incinerator burning. The VCAPCD revisions concern the emission of particulate matter (PM–10) from open burning. We are proposing to approve local rules that administer regulations and regulate emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by July 7, 2004.

ADDRESSES: Mail or e-mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, or e-mail to *steckel.andrew@epa.gov*, or

submit comments at *http://www.regulations.gov*.

You can inspect a copy of the submitted rule revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see a copy of the submitted rule revisions and TSDs at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, (Mail Code 6102T), Room B–102, 1301 Constitution Avenue, NW., Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Great Basin Unified Air Pollution Control District, 157 Short Street, Suite 6, Bishop, CA 93514

Ventura County Air Pollution Control District, 669 Country Square Drive, Ventura, CA 93003

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4118, *petersen.alfred@epa.gov*.

SUPPLEMENTARY INFORMATION: This proposal addresses the approval of local GBUAPCD Rules 406 and 407 and VCAPCD Rule 56. In the Rules section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: May 12, 2004.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

[FR Doc. 04–12768 Filed 6–4–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[NV053–0076b; FRL–7670–2]

Delegation of National Emission Standards for Hazardous Air Pollutants for Source Categories; State of Nevada; Nevada Division of Environmental Protection—Bureau of Air Pollution Control

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to section 112(l) of the 1990 Clean Air Act, EPA granted delegation of specific national emission standards for hazardous air pollutants (NESHAPs) to the Nevada Division of Environmental Protection—Bureau of Air Pollution Control on January 12, 2004. EPA is proposing to revise regulations to reflect the current delegation status of NESHAPs in Nevada.

DATES: Any comments on this proposal must arrive by July 7, 2004.

ADDRESSES: Send comments to Andrew Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, or e-mail to *steckel.andrew@epa.gov*, or submit comments at *http://www.regulations.gov*.

Copies of the submitted request are available for public inspection at EPA's Region IX office during normal business hours (docket number A–96–25) by appointment.

FOR FURTHER INFORMATION CONTACT: Mae Wang, EPA Region IX, (415) 947–4124, *wang.mae@epa.gov*.

SUPPLEMENTARY INFORMATION: This document concerns the delegation of unchanged NESHAPs to the Nevada Division of Environmental Protection—Bureau of Air Pollution Control. In the Rules and Regulations section of this **Federal Register**, EPA is amending regulations to reflect the current delegation status of NESHAPs in Nevada. EPA is taking direct final action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is planned. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time. For further information, please see the direct final action.

Authority: This action is issued under the authority of section 112 of the Clean Air Act, as amended, 42 U.S.C. 7412.

Dated: May 18, 2004.

Deborah Jordan,

Director, Air Division, Region IX.

[FR Doc. 04–12774 Filed 6–4–04; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 69, No. 109
Monday, June 7, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee; Meeting

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Executive Director of the Joint Board for the Enrollment of Actuaries gives notice of a meeting of the Advisory Committee on Actuarial Examinations (portions of which will be open to the public) in Washington, DC at the Office of Professional Responsibility on June 29 and June 30, 2004.

DATES: Tuesday, June 29, 2004, from 9 a.m. to 5 p.m., and Wednesday, June 30, 2004, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held in Room 6505IR, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patrick W. McDonough, Executive Director of the Joint Board for the Enrollment of Actuaries, 202–622–8225.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in Room 6505IR, 1111 Constitution Avenue, NW., Washington, DC on Tuesday, June 29, 2004, from 9 a.m. to 5 p.m., and Wednesday, June 30, 2004, from 8:30 a.m. to 5 p.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in 29 U.S.C. 1242(a)(1)(B) and to review the May 2004 Basic (EA–1) and Pension (EA–2B) Joint Board Examinations in order to make recommendations relative thereto, including the minimum acceptable pass score. Topics for inclusion on the syllabus for the Joint Board's examination program for the November 2004 Pension (EA–2A) Examination will be discussed.

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., that the portions of the meeting dealing with the discussion of questions which may appear on the Joint Board's examinations and review of the May 2004 Joint Board examinations fall within the exceptions to the open meeting requirement set forth in 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

The portion of the meeting dealing with the discussion of the other topics will commence at 1 p.m. on June 30 and will continue for as long as necessary to complete the discussion, but not beyond 3 p.m. Time permitting, after the close of this discussion by Committee members, interested persons may make statements germane to this subject. Persons wishing to make oral statements must notify the Executive Director in writing prior to the meeting in order to aid in scheduling the time available and must submit the written text, or at a minimum, an outline of comments they propose to make orally. Such comments will be limited to 10 minutes in length. All other persons planning to attend the public session must also notify the Executive Director in writing to obtain building entry. Notifications of intent to make an oral statement or to attend must be faxed, no later than June 23, 2004, to 202–622–2207, Attn: Executive Director. Any interested person also may file a written statement for consideration by the Joint Board and the Committee by sending it to the Executive Director: Joint Board for the Enrollment of Actuaries, c/o Internal Revenue Service, Attn: Executive Director SE:OPR, 1111 Constitution Avenue, NW., Washington, DC 20224.

Dated: June 1, 2004.

Patrick W. McDonough,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 04–12823 Filed 6–4–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Evaluation of the Environmental Intervention Handbook

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the new information collection, Evaluation of the Environmental Intervention Handbook.

DATES: Comments must be received in writing on or before August 6, 2004 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Patricia L. Winter, Pacific Southwest Research Station, Forest Service, USDA, 4955 Canyon Crest Drive, Riverside, CA 92507.

Comments also may be submitted via facsimile to (909) 680–1501 or by e-mail to: *pwinter@fs.fed.us.*

The public may inspect comments received at 4955 Canyon Crest Drive, Riverside, CA 92507; building one reception during normal business hours. Visitors are encouraged to call ahead to (909) 680–1500 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Patricia L. Winter, Pacific Southwest Research Station, USDA FS, (909) 680–1557.

SUPPLEMENTARY INFORMATION: *Title:* Evaluation of the Environmental Intervention Handbook.

OMB Number: 0596—New.

Expiration Date of Approval: New.

Type of Request: New.

Abstract: Forest Service and university researchers will contact recipients of a handbook designed to help resource managers reduce depreciative activities. Through those contacts they will evaluate the uses of the handbook, barriers to usage, and the need for revision of the handbook or creation of supplementary materials. This will help the researchers improve their ability to provide information to natural resource managers on reducing activities like littering, vandalism, and

other activities that cause damage. To gather the information, a mini-survey will be sent through the mail to all handbook recipients. Those agreeing to participate further will participate in a more in-depth survey, conducted by e-mail, telephone or mail, based on respondent preference. Follow-up telephone contacts may occur if we need to clarify responses to the in-depth survey.

The information will be collected and analyzed by a Forest Service researcher and analyst/technicians, and a researcher at a cooperating university. Both researchers are experts in applied social psychology and survey research.

1. Respondents to the mini survey will be asked about recollection of the handbook, about the role of depreciative activities in their own work settings, and about their willingness to participate in the in-depth survey. Respondents to the in-depth survey will be asked to assess the impact of depreciative activities in natural resource settings, their opinion of availability of materials to assist resource managers in addressing depreciative activities, to rate a series of aspects of the intervention handbook, and to provide some basic soiodemographic information for purposes of comparison to other respondents.

2. All recipients of the Environmental Intervention Handbook will be contacted. Responses will be voluntary and confidential.

3. Responses will be used to evaluate the application and uses of the handbook, the need for revision of the handbook, and the need for additional tools or supplementary information to be used with handbook.

Without the proposed information collection, assessment of how the Handbook was used, how well it worked, whether or not we need to revise it, and if we need to provide additional tools will not be known. This information will help the researchers supply information to natural resource managers on methods to decrease depreciative activities. The information can also be shared with other researchers who are developing methods for reducing depreciative activities.

Estimate of Annual Burden: The average annual burden estimated per respondent is 32 minutes, based on 50 respondents at 8 minutes for the mini-survey, 45 respondents at 20 minutes for the in-depth survey, and 20 respondents at 15 minutes for the follow-up.

Type of Respondents: Respondents include natural resource managers in State, Regional, and county agencies, academicians, environmental educators, consultants, and researchers.

Estimated Annual Number of Respondents: Fifty respondents will be contacted.

Estimated Annual Number of Responses per Respondent: A maximum of three responses per year will be requested.

Estimated Total Annual Burden on Respondents: The annual burden on respondents that is estimated for this information collection is 26.7 hours.

Comment is Invited:

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: May 28, 2004.

Ann M. Bartuska,

Deputy Chief for Research and Development.

[FR Doc. 04–12812 Filed 6–4–04; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Perceptions of Risk, Trust, Responsibility, and Management Preferences Among Fire-Prone Communities on the San Bernardino National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the new information collection, Perceptions of Risk, Trust, and Responsibility, and Management Preferences Among Fire-Prone Communities on the San Bernardino National Forest.

DATES: Comments must be received in writing on or before August 6, 2004, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Patricia L. Winter, Pacific Southwest Research Station, Forest Service, USDA, 4955 Canyon Crest Drive, Riverside, CA 92507.

Comments also may be submitted via facsimile to (909) 680–1501 or by e-mail to: *pwinter@fs.fed.us.*

The public may inspect comments received at 4955 Canyon Crest Drive, Riverside, CA 92507; building one reception during normal business hours. Visitors are encouraged to call ahead to (909) 680–1500 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Patricia L. Winter, Pacific Southwest Research Station, USDA FS, (909) 680–1557.

SUPPLEMENTARY INFORMATION:

Title: Perceptions of Risk, Trust, Responsibility, and Management Preferences Among Fire-Prone Communities on the San Bernardino National Forest.

OMB Number: 0596–New.

Expiration Date of Approval: N/A.

Type of Request: New.

Abstract: Forest Service and university researchers will contact community residents within or adjacent to the San Bernardino National Forest. Through those contacts they will evaluate concern about fire and fire risk, knowledge about fire, values focused on fire management, trust, objectives and alternatives for fire management, personal experiences with fire, stressors associated with fire and fire risk, responsibility and accomplishments for fire management, future orientation, and sociodemographics. The results will help the researchers improve their ability to provide information to natural resource managers on public perceptions of fire and fire management. To gather the information, residents in four communities within or adjacent to the San Bernardino National Forest will be contacted through mailed correspondence, inviting their participation in a focus group study. Willing or interested parties will contact the researcher to be scheduled into one of two sessions in their community. Those agreeing to participate will be involved in a focus group discussion and will complete a self-administered survey.

The information will be collected and analyzed by a Forest Service researcher and analyst/technicians, and a researcher at a cooperating university. Both researchers are experts in applied social psychology and survey research.

1. Participants will first complete a questionnaire focused on concern about fire, knowledge about fire, values similarity with the Forest Service, trust, objectives for fire management, personal experience with fire, stressors of fire and fire risk, responsibility for risk reduction, accomplishment of risk reduction, future orientation, and sociodemographics. Then, participants will be guided through a discussion on the following topics: objectives/values and concerns in fire management, alternatives for accomplishing objectives, values/goals and trust, and information needs and interests.

2. All residents age 18 or older residing in the 4 selected communities will be invited to participate. Invitation will arrive by mail. Two sessions will be held in each community in order to accommodate as many participants as possible. Responses will be voluntary and confidential.

3. Responses will be used to evaluate the values linked to fire and fire management among forest community residents, their personal experiences with fire and how they have addressed fire risk, perceived responsibility and accomplishments in addressing fire risk, and personal characteristics that might influence these responses. The information should shed light on residents' perceptions and expectations for fire management and on the role of fire risk and how they address it in their lives. Results will be provided to resource managers on the forest who can use the information to help them determine the role of public opinion in selection of fire management strategies (long- and short-term) as well as in forming information that can be provided to various publics about fire and fire management.

Without the proposed information collection managers will have to rely on the scant information available on public views regarding fire and fire management, and the anecdotal information collected through their direct experiences with publics regarding impacts of fire and fire risk. This information will help the researchers supply information to natural resource managers and can also be shared with other researchers who are focusing their own work on natural resource management values and objectives, as well as fire management specifically.

Estimate of Annual Burden: The average annual burden estimated per respondent is 120 minutes, and with an estimated 50 participants from each of 4 communities, the annual burden is 400 hours. An additional 66 hours is added to the burden for scheduling of participants into sessions. Total is 466 hours.

Type of Respondents: Respondents will be community residents residing within the selected locations within or adjacent to the San Bernardino National Forest.

Estimated Annual Number of Respondents: Two hundred participants are expected in the focus group and survey portions of the study. As many as 800 individuals may be involved in the contacts for scheduling and invitation purposes.

Estimated Annual Number of Responses per Respondent: A maximum of two responses per year per respondent are expected. One for the scheduling into a session and one for participation.

Estimated Total Annual Burden on Respondents: The annual burden on respondents that is estimated for this information collection is 466 hours.

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: May 28, 2004.

Ann M. Bartuska,

Deputy Chief for Research and Development.

[FR Doc. 04–12813 Filed 6–4–04; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Fishlake National Forest, Utah, Fishlake OHV Route Designation Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Supervisor of the Fishlake National Forest gives notice of the intent to prepare an environmental impact statement (EIS) to designate a system of routes and managed use areas that are open to motorized use. Creating a new motorized travel plan is necessary to improve management and enforcement of off-highway vehicle travel policy on the Forest. Existing travel rules that were established in the 1986 Forest Plan did not anticipate the rapid increase in off-highway vehicle (OHV) use or the types of user conflicts and resource impacts that have occurred in recent years. This notice describes the specific elements to be included in a new travel plan, decisions to be made, estimated dates for filing the EIS, information concerning public participation, and the names and address of the agency officials who can provide information.

DATES: Comments concerning the scope of the analysis must be received by July 30, 2004. The draft environmental impact statement is scheduled for completion by the fall of 2004 and the final environmental impact statement is expected before spring of 2005.

ADDRESSES: Send written comments or requests for further information to: Dale Deiter, OHV Team Leader, Fishlake National Forest, 115 East 900 North, Richfield, UT 84701. Phone: 435–896–1007. Electronic correspondence may be sent to *comments-intermtn-fishlake@fs.fed.us.* Please include "Fishlake OHV Route Designation Project" on the subject line.

FOR FURTHER INFORMATION CONTACT: Davida Carnahan, Public Affairs Officer, Fishlake National Forest, 115 East 900 North, Richfield, UT 84701. Phone: 435–896–1070.

For technical information contact: Max Reid, Public Services Staff, Fishlake National Forest, 115 East 900 North, Richfield, UT 84701. Phone: 435–896–1075.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The Fishlake National Forest Supervisor has determined that there is a need to improve management and enforcement of off-highway vehicle

travel policy on the Forest. This need includes three fundamental management considerations.

1. *The need to better accommodate current motorized use and to address future growth.* There has been rapid growth in OHV use that was not anticipated when the 1986 Fishlake Forest Plan was written. Use on the managed Paiute and Great Western Trail systems alone has increased roughly 172 percent between 1995 and 2003. Similarly, OHV registrations in Utah have increased 142 percent from 1998 to 2003. Most of these vehicles in turn are used on public lands. The Forest travel plan map currently allows unrestricted motorized access seasonally or yearlong on 62 percent of the Fishlake National Forest System lands. This is no longer a desirable or sustainable management option given the existing number of users and expected growth.

2. *The need to have a travel plan that is simple to understand and implement, and consistent with other Forests and land management agencies.*

The model used for the existing travel plan relies on "open unless signed or mapped closed" designations that are complicated to interpret and as a result are difficult to enforce. The lack of simple and consistent travel policies among other Forests and land management agencies is confusing for the public and inhibits cooperative law enforcement.

3. *The need to reduce the potential for OHV conflicts and impacts to other resource uses and values.*

Some OHV activity is occurring in areas and on routes where motorized use is prohibited. In some open areas, networks of user-developed routes continue to appear that are creating user conflicts and resource impacts. Problem areas are not uniformly distributed throughout the Forest. Some of this use has occurred in riparian areas and on highly erodible slopes. In other areas use is very light and little or no effects from motorized, wheeled cross-country travel are evident. Types of impacts occurring in some cases include the introduction and spread of noxious weeds, trampling and compaction of soils and rare plants, rutting of wetlands, disturbance and displacement of wildlife and livestock, damage to cultural resources, and impacts to water quality, riparian and fisheries habitats. The major motorized impacts are occurring during hunting season, from spring antler shed gathering, in play areas next to communities, and around popular dispersed camping areas.

The Forest Service and public have a need for greater certainty about which roads and trails are part of the managed system of motorized and non-motorized routes. Greater certainty addresses the needs above by providing:

- Improved ability to prioritize and budget for road and trail maintenance, and to evaluate public safety hazards,
- Focus on how and where to sustain and improve motorized and non-motorized recreation opportunities on the Fishlake National Forest,
- Improved ability to coordinate public access across different land ownerships,
- Improved public understanding and adherence to travel rules, thus reducing the development of user-created routes,
- Improved ability to reduce motorized route and use impacts to other resources values and Forest users.

Proposed Action

Additional details and description of the proposed action can be found on the Internet at *http://www.fs.fed.us/r4/fishlake/projects/obv.shtml.* The proposed action has been developed by tentatively designating a motorized travel plan that moves towards desired conditions identified in the pre-project assessment. The proposed travel plan was compared to the existing travel plan to identify changes from current conditions. The proposed action only includes routes or areas where a change in current use or route classification is needed to create the desired travel plan. The proposed action will specify the miles of unclassified routes to be added, and the miles of classified routes to be removed from the Forest's existing motorized system. Travel by OHVs would only be allowed on routes and areas designated as open. Construction of the final proposed action is still underway, but it is anticipated that the route system will include over 2,500 miles of roads and trails on National Forest System lands. In addition, seasonal restrictions would be added or removed on some routes. The seasonal closure period would be lengthened from March 31 to April 15 with a start date of January 1. The Paiute and Great Western Trail systems would be retained. Motorized cross-country travel would be prohibited except as specified for direct access to and from dispersed camping, firewood gathering, emergency fire suppression, search and rescue, law enforcement, military operations, and Forest Service administrative use. Limited changes in area restrictions for over snow travel by snowmobiles are proposed to protect critical mule deer winter ranges and Research Natural Areas. The proposed alternative designates 780 acres in three managed use areas west of Richfield, UT, and 193 acres on the Velvet Ridges near Torrey, UT where motorized cross-country travel would be permitted. None of the proposed exceptions where cross-country travel is permitted authorize resource damage by users. The proposed action also includes an implementation plan that addresses items such as: Managing the designated system, eliminating unauthorized growth of the route network, signing and implementing routes and area designations, enforcing the new motorized travel plan, involving and educating the public in access and travel management, and planning future travel management decisions.

Possible Alternatives

All alternatives studied in detail must fall within the scope of the purpose and need for action and will generally tier to and comply with the Fishlake forest plan. The added restrictions on motorized cross-country travel are the only proposed amendments to the forest plan at this time.

Law requires a "no-action alternative". The No Action alternative would maintain current allowances and restrictions for OHV use and motorized cross-country travel described in the current Fishlake forest plan and travel plan.

The Forest is expecting that the public input will generate either thematic concerns or route-specific issues that may be addressed by modifying the proposed action to create a new alternative or alternatives.

Responsible Official

Mary Erickson, Forest Supervisor, Fishlake National Forest, 115 East 900 North, Richfield, UT 84701.

Nature of Decision To Be Made

The decisions to be made in this project are:

1. Identifying rules, exceptions, and strategies for closing the Forest to motorized cross-country travel.

2. Designating the type and season of motorized use to be allowed on classified routes.

3. Designating or eliminating unclassified travelways.

- Legally, the Forest Service cannot recognize nor maintain unclassified routes. Therefore, it is proposed to either designate these travelways or eliminate them. Currently there are about 700 miles of inventoried or known roads and trails that are not officially part of the Forest travel system. These routes may have been constructed for a specific short-time purpose and were never properly closed, or some may also be the result of traffic going off-route repeatly

forming an illegal road or trail. Unclassified routes mapped before completion of the route designation project may be evaluated directly in the EIS. Disposition of routes that are added to the inventory after completion of the EIS will be assessed using a screening process that will be disclosed in the EIS. The analysis for this project will provide a one-time assessment of unclassified routes that will result in either the inclusion or elimination of a given route from the Forest travel network. After the decision date, any newly created travelways will by default be designated for elimination unless a separate analysis and decision are conducted under the National Environmental Policy Act (NEPA). Future road and trail proposals for new construction will undergo disclosure and analysis in accordance with NEPA.

Scoping Process

The first formal opportunity to comment on the Fishlake OHV Route Designation Project is during the scoping process (40 CFR 1501.7), which begins with the issuance of this Notice of Intent. All comments, including the names, addresses and when provided, will be placed in the record and are available for public inspection. Mail comments to: Dale Deiter, Fishlake National Forest, 115 East 900 North, Richfield, UT 84701.

The Forest Service requests comments on the nature and scope of the environmental, social, and economic issues, and possible alternatives related to the development of the new travel management plan and EIS.

A series of public opportunities are scheduled to explain the proposed travel plan and route designation process to provide an opportunity for public input. Seven scoping meetings are planned.

June 15, 2004—Richfield, UT at Snow College Conference Center from 6:30 p.m. to 9:30 p.m.
June 16, 2004—Fillmore, UT at Millard High School Lunchroom from 7 p.m. to 9 p.m.
June 17, 2004—Loa, UT at the Loa Civic Center from 7 p.m. to 9 p.m.
June 22, 2004—Beaver, UT at the 10th Street Center from 7 p.m. to 9 p.m.
June 24, 2004—Junction, UT at the Piute Event Center 7 p.m. to 9 p.m.
June 29, 2004—Salina, UT at the old Legion Hall from 7 p.m. to 9 p.m.

A meeting in Salt Lake City has *tentatively* been scheduled for June 23, 2004 at the Salt Lake City Public Library 7 p.m. to 9 p.m.

Written comments will be accepted at these meetings. The Forest Service will work with tribal governments to address issues that would significantly or uniquely affect them.

Preliminary Issues

Important goals for the project are to create a motorized travel plan that is simple to understand, consistent with other public land management agencies in Utah, and is enforceable. Protections for critical mule deer winter range and Threatened and Endangered plant habitats, roadless considerations, and the need to maintain motorized and nonmotorized recreational opportunities have also directed the development and design of the proposed action.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. The Fishlake National Forest has received and assessed numerous comments from the 2001 OHV Events Environmental Assessment that was completed to permit the Rocky Mountain and Fillmore ATV jamborees. The Forest has also received substantial input at public meetings held for the Forest Plan revision effort and from Topical Working Groups (TwiGs) that have addressed suitability issues related to OHVs, dispersed recreation, and roadless. Through these efforts the Forest has an understanding of the broad range of perspectives on the resource issues and social values attributed to motorized recreation on the Fishlake National Forest. Consequently, site-specific comments are the most important types of information needed for this EIS. Comments about existing or proposed conditions on individual routes, desired motorized or non-motorized recreation opportunities, uses and impacts, and travel plan rules and designations are being sought. Public knowledge about existing routes that are not shown on the Forest inventory is also requested. Because the Fishlake OHV Route Designation EIS is a stand-alone document, only public comment letters received directly to this project will be formally addressed in an appendix in the FEIS.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the July 30, 2004 comment period and during the comment period following the draft EIS so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: June 1, 2004.

Mary C. Erickson,

Fishlake Forest Supervisor.

[FR Doc. 04–12780 Filed 6–4–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

McNally Fire Roadless Restoration Project

AGENCY: USDA, Forest Service.

ACTION: Cancellation of Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: The Department of Agriculture, Forest Service is canceling the Notice of Intent (NOI) to prepare an environmental impact statement (EIS) that was published in the **Federal Register** on Friday, March 28, 2003, pages 15147 to 15148, to address the impacts of the McNally fire within the Rincon, Chico, and Cannell Roadless areas. The purpose of this EIS was to address and propose restoration of the damaged ecosystem due to the McNally fire within these roadless areas. The Sequoia National Forest proposes at this time that Roadless characteristics, while degraded, will be left to recover naturally.

FOR FURTHER INFORMATION CONTACT: Tom Simonson, Ecosystem Manager, Sequoia National Forest, 900 West Grand Avenue, Porterville, CA 93257. The phone number is (559) 784–1500.

Dated: May 28, 2004.

Arthur L. Gaffrey,

Forest Supervisor, Sequoia National Forest.

[FR Doc. 04–12779 Filed 6–4–04; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: U.S. Commission on Civil Rights.

Date and Time: Friday, June 11, 2004, 9:30 a.m.

Place: U.S. Commission on Civil Rights, 624 9th Street, NW., Room 540, Washington, DC 20425.

Status:

Agenda

I. Approval of Agenda
II. Approval of Minutes of April 9, 2004 Meeting
III. Announcements
IV. Staff Director's Report
V. "Funding Federal Civil Rights Enforcement: 2005" Report
VI. "Ten Year Check-Up: Have Federal Agencies Responded to Civil Rights Recommendations? Volume IV: An Evaluation of the Departments of Education, Health and Human Services, and Housing and Urban Development, and the Equal Employment Opportunity Commission" Report
VII. Closing Meeting on Personnel matters
VIII. Future Agenda Items

FOR FURTHER INFORMATION CONTACT: Les Jin, Press and Communications (202) 376–7700.

Debra A. Carr,

Deputy General Counsel.

[FR Doc. 04–12956 Filed 6–3–04; 2:46 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–867]

Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review: Automotive Replacement Glass Windshields from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review.

SUMMARY: On March 8, 2004, the Department of Commerce ("Department") published a notice of initiation of changed circumstances review of the antidumping duty order on Automotive Replacement Glass ("ARG") Windshields from the People's Republic of China ("PRC") to determine whether Shenzhen CSG Automotive Glass Co., Ltd. ("Shenzhen CSG") is the successor–in-interest to Shenzhen Benxun AutoGlass Co., Ltd. ("Shenzhun Benxun") for purposes of determining antidumping and countervailing duty liabilities. *See Initiation of Antidumping Duty Changed Circumstances Review: Automotive Replacement Glass Windshields from the People's Republic of China*, 69 FR 10655 (March 8, 2004) ("*Notice of Initiation*"). We have preliminarily determined that Shenzhen CSG is the successor–in-interest to Shenzhun Benxun, for purposes of determining antidumping duty liability in this proceeding. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 7, 2004.

FOR FURTHER INFORMATION CONTACT: Jon Freed or Robert Bolling, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–3818 or (202) 482–3434, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 4, 2002, the Department of Commerce ("the Department") published in the **Federal Register** the antidumping duty order on ARG windshields from the PRC. *See Antidumping Duty Order: Automotive Replacement Glass Windshields from the People's Republic of China*, 67 FR 16087 (April 4, 2002). On April 7, 2003, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on ARG windshields from the PRC for the period September 19, 2001 through March 31, 2003. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 68 FR 16761 (April 7, 2003). On April 30, 2003, the Department received a letter on behalf of Shenzhen CSG Automotive Glass Co., Ltd. ("Shenzhen CSG") requesting an administrative review of its sales and entries of subject merchandise. In its request, Shenzhen CSG indicated that it had undergone a name change, and that it had formerly been known as Shenzhen Benxun. Shenzhen Benxun was a respondent in the original investigation of this case. The request for review did not include a request for a changed circumstance review to determine whether Shenzhen CSG was in fact a successor in interest to Shenzhen Benxun. On May 21, 2003, in response to timely requests from respondents subject to the order on ARG windshields from the PRC, the Department published in the **Federal Register** a notice of initiation of an antidumping duty administrative review of sales by ten respondents, including "Shenzhen CSG Automotive Glass Co., Ltd. (formerly known as Shenzhen Benxun AutoGlass Co., Ltd.)" of ARG windshields from the PRC for the period September 19, 2001 through March 31, 2003. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 68 FR 27781 (May 21, 2003). On June 3, 2003, the Department issued antidumping duty questionnaires to the respondents, including "Shenzhen CSG Automotive Glass Co., Ltd. (formerly known as Shenzhen Benxun AutoGlass Co., Ltd.)". On July 8, 2003, the Department received a letter from "Shenzhen CSG Automotive Glass Co., Ltd. (formerly known as Shenzhen Benxun AutoGlass Co., Ltd.)" withdrawing its request for an administrative review of its sales and

entries of subject merchandise exported to the United States and covered by the antidumping duty order on ARG windshields from the PRC. On September 8, 2003, the Department published in the **Federal Register** a notice of partial rescission of the administrative review on ARG windshields from the PRC, which included a rescission of the administrative review of sales and entries from "Shenzhen CSG Automotive Glass Co., Ltd. (formerly known as Shenzhen Benxun AutoGlass Co., Ltd.)". On December 29, 2003, the Department instructed Customs and Border Protection ("Customs") to liquidate entries from Shenzhen Benxun AutoGlass Co., Ltd. at its company–specific rate, but to liquidate entries from Shenzhen CSG Automotive Glass Co., Ltd. at the PRC–wide rate because the Department never had an opportunity to determine whether Shenzhen CSG was a successor–in-interest to Shenzhen Benxun. On January 12, 2004, the Department received a letter on behalf of "Shenzhen CSG Automotive Glass Co., Ltd. (formerly known as Shenzhen Benxun AutoGlass Co., Ltd.)" requesting that the Department amend instructions sent to Customs that direct Customs to liquidate all of Shenzhen CSG's entries at the PRC–wide rate. Shenzhen CSG asserts that Shenzhen Benxun changed its name to Shenzhen CSG and that entries from Shenzhen CSG should be entitled to Shenzhen Benxun's cash deposit rate.

On March 8, 2004, the Department published a notice of initiation of changed circumstances review of the antidumping duty order on ARG Windshields from the PRC to determine whether Shenzhen CSG is the successor–in-interest to Shenzhun Benxun for purposes of determining antidumping liabilities. *See Notice of Initiation.* On March 17, 2004, the Department issued a Successorship Questionnaire to Shenzhun Benxun. Shenzhen Benxun submitted its response to the Department's Successorship questionnaire on April 6, 2004 ("Shenzhen Benxun's Response").

Scope of the Review

The products covered by this review are ARG windshields, and parts thereof, whether clear or tinted, whether coated or not, and whether or not they include antennas, ceramics, mirror buttons or VIN notches, and whether or not they are encapsulated. ARG windshields are laminated safety glass (*i.e.*, two layers of (typically float) glass with a sheet of clear or tinted plastic in between (usually polyvinyl butyral)), which are produced and sold for use by automotive glass installation shops to replace windshields in automotive vehicles (*e.g.*, passenger cars, light trucks, vans, sport utility vehicles, *etc.*) that are cracked, broken or otherwise damaged.

ARG windshields subject to this review are currently classifiable under subheading 7007.21.10.10 of the Harmonized Tariff Schedules of the United States (HTSUS). Specifically excluded from the scope of this investigation are laminated automotive windshields sold for use in original assembly of vehicles. While HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this review is dispositive.

Preliminary Results of the Review

In Shenzhen Benxun's response, Shenzhen Benxun advised the Department that the firm had legally changed its name from Shenzhen Benxun AutoGlass Co., Ltd. to Shenzhen CSG Automotive Glass Co., Ltd.

In antidumping duty changed circumstances reviews involving a successor–in-interest determination, the Department typically examines several factors including, but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See Brass Sheet and Strip from Canada: Notice of Final Results of Antidumping Administrative Review* 57 FR 20460, 20462 (May 13, 1992) ("*Canada Brass*"). While no single factor or combination of factors will necessarily be dispositive, the Department generally will consider the new company to be the successor to the predecessor company if the resulting operations are essentially the same as those of the predecessor company. *See Industrial Phosphoric Acid from Israel: Final Results of Changed Circumstances Review* 59 FR 6944, 6945 (February 14, 1994), and *Canada Brass, 57 FR 20462.* Thus, if the record evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the predecessor company, the Department may assign the new company the cash deposit rate of its predecessor. *See Fresh and Chilled Atlantic Salmon from Norway: Final Results of Changes Circumstances Antidumping Duty Administrative Review* 64 FR 9979, 9980 (March 1, 1999).

Our review of the evidence provided by Shenzhen Benxun indicates, preliminarily, that the change in its name has not changed the company's management, production facilities, supplier relationships, or customer base.

Shenzhen Benxun provided copies and translations of the Notification of Name Change issued by the Shenzhen City Industry and Commerce Administrative Bureau. *See Shenzhen Benxun's Response* at Exhibit 1. Shenzhen Benxun provided copies and translations of the business licenses of both Shenzhen CSG and Shenzhen Benxun issued by the Shenzhen City Industry and Commerce Administrative Bureau. *See Shenzhen Benxun's Response* at Exhibit 2. The Notification of Name Change and the business licenses establish that the Shenzhen City Industry and Commerce Administrative Bureau recognized Shenzhen Benxun's name change to Shenzhen CSG on September 29, 2002.

Shenzhen Benxun provided detailed organizational charts and lists of directors and managers both prior to and following the change of name to Shenzhen CSG. *See Shenzhen Benxun's Response* at Exhibit 4. These organizational charts and lists of directors and managers establish that the management and organizational structure of Shenzhen CSG is substantially the same as that of Shenzhen Benxun. Shenzhen Benxun explained that its production has not changed due to the name change. Shenzhen Benxun also noted that its key production managers remained the same both before and after the name change as an indication that the name change had no impact on the production of the company. *See Shenzhen Benxun's Response* at page 3. Shenzhen CSG's supplier relationships are reflective of those of Shenzhen Benxun as illustrated by the supplier lists provided. *See Shenzhen Benxun's Response* at Exhibit 5. Finally, Shenzhen Benxun provided the customer lists of both Shenzhen Benxun and Shenzhen CSG, which, while not identical, are sufficiently similar to show no significant change in the customer base. *See Shenzhen Benxun's Response* at Exhibit 6.

In sum, the evidence now presented by Shenzhen Benxun establishes that Shenzhen CSG is the successor–in-interest to Shenzhen Benxun. The change of name has resulted in minimal changes to the original corporate structure of Shenzhen Benxun as it applies to the production of subject merchandise. Shenzhen CSG's management, production facilities, supplier relationships, sales facilities and customer base are essentially unchanged from those of Shenzhen Benxun. Therefore, the record evidence demonstrates that Shenzhen CSG

operates in the same manner as the predecessor company. Consequently, we preliminarily determine that Shenzhen CSG should be given the same antidumping duty treatment as Shenzhen Benxun.

The cash deposit determination from this changed circumstances review will apply to all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this changed circumstances review. *See Notice of Final Results of Antidumping Duty Changed Circumstances Review: Pressure Sensitive Plastic Tape From Italy* 69 FR 15297, 15298 (March 25, 2004), *see also, Certain Hot–Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom: Final Results of Changed–Circumstances Antidumping and Countervailing Duty Administrative Reviews* 64 FR 66880, 66881 (November 30, 1999). This deposit rate shall remain in effect until publication of the final results of the next administrative review in which Shenzhen CSG participates.

Public Comment

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument: (1) a statement of the issue, and (2) a brief summary of the argument. Any interested party may request a hearing within 10 days of the date of publication of this notice. Any hearing, if requested, will be held no later than 25 days after the date of publication of this notice, or the first workday thereafter. Case briefs may be submitted by interested parties not later than 15 days after the date of publication of this notice. Rebuttal briefs, limited to the issues raised in the case briefs, may be filed not later than 20 days after the date of publication of this notice. All written comments shall be submitted in accordance with 19 CFR 351.303. The Department will publish the final results of this changed circumstances review, including its analysis of issues raised in any written comments.

This notice is in accordance with sections 751(b) and 777(i)(1) of the Tariff Act of 1930, as amended, and section 351.221(c)(3)(i) of the Department's regulations.

Dated: May 27, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–12806 Filed 6–4–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–007]

Barium Chloride from The People's Republic of China; Final Results of the Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Expedited Sunset Review of Antidumping Duty Order on Barium Chloride from The People's Republic of China; Final Results.

SUMMARY: On February 2, 2004, the Department of Commerce ("the Department") published the notice of initiation of sunset review on barium chloride from the People's Republic of China ("China"). On the basis of the notice of intent to participate, and adequate substantive comments filed on behalf of a domestic interested party and inadequate response (in this case, no response) from respondent interested party, we determined to conduct an expedited (120–day) sunset review. As a result of this review, we find that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: June 7, 2004.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482–5050.

SUPPLEMENTARY INFORMATION:

Background

On February 2, 2004, the Department published the notice of initiation of sunset review of the antidumping duty order on barium chloride from China pursuant to section 751(c) of the Tariff Act of 1930, as amended (the "Act").[1] The Department received Notice of Intent to Participate on behalf of Chemical Products Corporation ("CPC"), a domestic interested party, within the deadline specified in section 351.218(d)(1)(i) of the Department's Regulations ("Sunset Regulations"). CPC claimed interested party status under Section 771(9)(C) of the Act as a U.S. producer of barium chloride. We received a complete substantive response from CPC within the 30–day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(I).

We did not receive a substantive response from any interested party respondents in this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited (120–day) sunset review of this antidumping duty order.

The order remains in effect for all Chinese manufacturers, producers, and exporters.

Scope of the Order

The merchandise covered by this order is barium chloride, a chemical compound having the formula $BaCl_2$ or $BaCl_2–2H_2$ 0, currently classifiable under item 2827.38.00 of the Harmonized Tariff Schedules (HTS). HTS items numbers are provided for convenience and for Customs purposes. The written descriptions remain dispositive.

Analysis of Comments Received

All issues raised in this case by CPC are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Ronald K. Lorentzen, Acting Director, Office of Policy, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated June 1, 2004, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the finding were to be revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in room B–099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at http://ia.ita.doc.gov/frn, under the heading "June 2004." The paper copy and electronic version of the Decision Memorandum are identical in content.

[1] Initiation of Five-Year (Sunset) Reviews,69 FR 4921 (February 2, 2004).

Final Results of Review

We determine that revocation of the antidumping duty order on barium chloride from China would be likely to lead to continuation or recurrence of dumping at the following percentage weighted–average margins:

Manufacturers/Exporters/Producers	Weighted Average Margin Percent
China National Chemicals Import and Export Corporation (SINOCHEM)	155.50
China–wide rate	155.50

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: May 28, 2004.

Jeffrey A. May,

Acting Assistant Secretary for Import Administration.

[FR Doc. 04–12807 Filed 6–4–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(C–427–819, C–428–829, C–421–809, C–412–821)

Low Enriched Uranium from France, Germany, the Netherlands, and the United Kingdom: Extension of Final Results of Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit for Final Results of Countervailing Duty Administrative Reviews.

EFFECTIVE DATE: June 7, 2004.

FOR FURTHER INFORMATION CONTACT: Darla Brown, Office of AD/CVD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2786.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (Department) to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Background

On February 5, 2004, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of administrative reviews of the countervailing duty (CVD) orders on low enriched uranium from France, Germany, the Netherlands, and the United Kingdom for the period May 14, 2001, through December 31, 2002 (*see Preliminary Results of Countervailing Duty Administrative Reviews: Low Enriched Uranium from Germany, the Netherlands, and the United Kingdom, 69 FR 5498 (February 5, 2004) and Preliminary Results of Countervailing Duty Administrative Review: Low Enriched Uranium from France*, 69 FR 5502 (February 5, 2004)). The final results are currently due no later than June 4, 2004.

Extension of Time Limit for Final Results of Reviews

We determine that these cases are extraordinarily complicated because there are a large number of complex issues which require thorough consideration and analysis by the Department, including numerous existing programs from the original investigation and changes to certain programs found countervailable in the investigation. Therefore, we require more time to properly analyze these issues. As a result, it is not practicable to complete the final results of these reviews within the original time limits. Therefore, the Department is extending the time limits for completion of the final results until no later than June 30, 2004. This date constitutes a 26–day extension for the administrative reviews of low enriched uranium from France, Germany, the Netherlands, and the United Kingdom.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: May 27, 2004.

Thomas F. Futtner,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 04–12805 Filed 6–4–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031104B]

Small Takes of Marine Mammals Incidental to Specified Activities; Marine Seismic Survey on the Blanco Fracture Zone in the Northeastern Pacific Ocean

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of application and proposed incidental take authorization; request for comments.

SUMMARY: NMFS has received an application from the Lamont-Doherty Earth Observatory (L-DEO), a part of Columbia University, for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting oceanographic seismic surveys on the Blanco Fracture Zone in the Northeastern Pacific Ocean. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization to L-DEO to incidentally take, by harassment, small numbers of several species of cetaceans and pinnipeds for a limited period of time within the next year.

DATES: Comments and information must be received no later than July 7, 2004.

ADDRESSES: Comments on the application should be addressed to P. Michael Payne, Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. The mailbox address for providing email comments is *PR2.031104B@noaa.gov* Include in the subject line of the e-mail comment the following document identifier: 031104B. Comments sent via email, including all attachments, must not exceed a 10–megabyte file size. A copy of the application containing a list of the references used in this document may be obtained by writing to this address or by telephoning the contact listed here and is also available at: *http://www.nmfs.noaa.gov/prot_res/PR2/Small_Take/smalltake_info.htm#applications.*

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, Office of Protected Resources, NMFS, (301) 713–2322, ext 128.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Under section 3(18)(A), the MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On March 8, 2004, NMFS received an application from L-DEO for the taking, by harassment, of several species of marine mammals incidental to conducting a seismic survey program. L-DEO plans to conduct a marine seismic survey in the Northeastern Pacific Ocean (NPO), off Oregon, during August, 2004. Up to two seismic surveys are scheduled to take place in the NPO. The main survey is planned to occur near the intersection of the Blanco Transform with the Juan de Fuca Ridge. Time permitting, a second survey may be conducted at Gorda Ridge. The main seismic survey will take place between 44° 20′ and 44° 42′ N. and between 129° 50′ and 130° 30′ W. or at least 450 km (243 nm) offshore and outside the Exclusive Economic Zone (EEZ) of any nation. The Gorda Ridge survey is located between 42° 20′ and 43° N. and between 126° 30′ and 127–157 km, at least 84 nm (155.6 km) offshore, but within the EEZ of the United States.

The purpose of the seismic survey is to obtain information on the structure of the oceanic crust created at the Juan de Fuca Ridge. More specifically, the survey will obtain information on the geologic nature of boundaries of the earth's crust created at the intermediate-spreading Juan de Fuca Ridge. Past studies have mapped those boundaries using manned submersibles, but they have not provided a link between geologic and seismic structure. This study will provide the seismic data to assess the geologic nature of the previously mapped areas.

Description of the Activity

The proposed seismic survey will involve one vessel, the *R/V Maurice Ewing* (*Ewing*). The *Ewing* will deploy a 10– or 12–airgun array as an energy source, with discharge volumes of 3050 in3 and 3705 in^3, respectively. The *Ewing* will also deploy and retrieve 12 Ocean Bottom Seismometers (OBSs), plus tow a 6–km (3.2 nm) streamer containing hydrophones, to receive the returning acoustic signals. As the airguns are towed along the survey lines, these two systems will receive the returning acoustic signals.

A total of approximately 150 kilometers (km) (81 nautical miles (nm)) of OBS surveys using a 12–gun array (24 hours of operation) and approximately 1017 km (549 nm) of Multi-Channel Seismic (MCS) profiles using a 10–gun array (6.5 days of operation) are planned to be conducted during the main survey. These line-kilometer figures include operations associated with start up, line changes of 10 km (5 nm) for the 12–gun array and 90 km (49 nm) for the 10–gun array), equipment testing, contingency profiles, and repeat coverage of any areas where initial data quality is sub-standard. In the unlikely event that there are no weather or equipment delays, additional MCS profiles may be acquired at the northern end of the Gorda Ridge where it intersects the Blanco Transform. The contingency survey would consist of 220 km (119 nm) of survey lines, plus 63 km (34 nm) for turns and connecting lines, for a total of 283 km (153 nm). Water depths within the seismic survey areas are 1600–5000 m (5250–16,405 ft).

During the airgun operations, the vessel will travel at 7.4–9.3 km/hr (4–5 knots), and seismic pulses will be emitted at intervals of 60–90 sec (OBS lines) and approximately 20 sec for the Multi-Channel Seismic profiles (MCS lines). The 20–sec spacing corresponds to a shot interval of about 50 m (164 ft), while the 60–90 sec spacing corresponds to a distance of 150 m (492 ft) to 220 m (722 ft), respectively. The 60–90 sec spacing along OBS lines is to minimize reverberation from previous shot noise during OBS data acquisition, and the exact spacing will depend on water depth.

For the 10– and 12–airgun arrays, the sound pressure fields have been modeled by L-DEO in relation to distance and direction from the airguns, and in relation to depth. Predicted sound levels are depicted in Figures 6 and 7 in L-DEO's application. Empirical data concerning those sound levels have been acquired based on measurements during an acoustic verification study conducted by L-DEO in the northern Gulf of Mexico from 27 May to 3 June 2003. L-DEO's analysis of the acoustic data from that study (Tolstoy *et al.*,

2004) provides limited measurements in deep water, such as found at Blanco Fracture and Gorda Ridge. Those data indicate that, for deep water, L-DEO's model tends to overestimate the received sound levels at a given distance. NMFS and L-DEO, therefore, propose that the 180–dB and 190–dB (re 1 microPascal (root-mean-squared (rms)) sound pressure fields that will correspond to the proposed safety radii (see Mitigation) will be the values predicted by L-DEO's model during airgun operations in deep water, including these planned survey operations.

In addition to the operations of the airgun array, the ocean floor will be mapped continuously throughout the entire cruise with an Atlas Hydrosweep DS–2 Multibeam 15.5–kHz bathymetric sonar, and a 3.5–kHz sub-bottom profiler. Both of these sound sources are commonly operated simultaneously with the airgun array, but may, on occasion, be utilized independent of the seismic array.

The Atlas Hydrosweep is mounted on the hull of the *Maurice Ewing*, and it operates in three modes, depending on the water depth. There is one shallow water mode and two deep-water modes: an Omni mode and a Rotational Directional Transmission (RDT) mode. The RDT mode is normally used during deep-water operation and has a 237–dB rms source output. In the RDT mode, each "ping" consists of five successive transmissions, each ensonifying a beam that extends 2.67 degrees fore-aft and approximately 30 degrees in the cross-track direction. The five successive transmissions (segments) sweep from port to starboard with minor overlap, spanning an overall cross-track angular extent of about 140 degrees, with small (<1 millisec) gaps between the pulses for successive 30–degree segments. The total duration of the "ping" including all five successive segments, varies with water depth, but is 1 millisec in water depths less than 500 m and 10 millisec in the deepest water. For each segment, ping duration is 1/5th of these values or 2/5th for a receiver in the overlap area ensonified by two beam segments. The "ping" interval during RDT operations depends on water depth and varies from once per second in less than 500 m (1640.5 ft) water depth to once per 15 seconds in the deepest water.

The sub-bottom profiler is normally operated to provide information about the sedimentary features and the bottom topography that is simultaneously being mapped by the Hydrosweep. The energy from the sub-bottom profiler is directed downward by a 3.5 kHz transducer mounted in the hull of the *Ewing*. The output varies with water depth from 50 watts in shallow water to 800 watts in deep water. Pulse interval is 1 second (s) but a common mode of operation is to broadcast five pulses at 1–s intervals followed by a 5–s pause. The beamwidth is approximately 30o and is directed downward. Maximum source output is 204 dB re 1 microPa, 800 watts, while nominal source output is 200 dB re 1 microPa, 500 watts. Pulse duration will be 4, 2, or 1 ms, and the bandwith of pulses will be 1.0 kHz, 0.5 kHz, or 0.25 kHz, respectively.

Sound levels have not been measured directly for the sub-bottom profiler used by the *Ewing*, but Burgess and Lawson (2000) measured sounds propagating more or less horizontally from a similar unit with similar source output (205 dB re 1 microPa m). The 160 and 180 dB re 1 microPa rms radii in the horizontal direction were estimated to be, respectively, near 20 m (66 ft) and 8 m (26 ft) from the source, as measured in 13 m or 43 ft water depth. The corresponding distances for an animal in the beam below the transducer would be greater, on the order of 180 m (591 ft) and 18 m (59 ft), assuming spherical spreading.

The sub-bottom profiler on the *Ewing* has a stated maximum source level of 204 dB re 1 microPa. Thus the received level would be expected to decrease to 160 and 180 dB about 160 m (525 ft) and 16 m (52 ft) below the transducer, respectively, assuming spherical spreading. Corresponding distances in the horizontal plane would be lower, given the directionality of this source (30° beamwidth) and the measurements of Burgess and Lawson (2000).

Characteristics of Airgun Pulses

Airguns function by venting high-pressure air into the water. The pressure signature of an individual airgun consists of a sharp rise and then fall in pressure, followed by several positive and negative pressure excursions caused by oscillation of the resulting air bubble. The resulting downward-directed pulse has a duration of only 10 to 20 ms, with only one strong positive and one strong negative peak pressure (Caldwell and Dragoset, 2000). Most energy emitted from airguns is at relatively low frequencies. For example, typical high-energy airgun arrays emit most energy at 10–120 Hz. However, the pulses contain some energy up to 500–1000 Hz and above (Goold and Fish, 1998).

The pulsed sounds associated with seismic exploration have higher peak levels than other industrial sounds to which whales and other marine mammals are routinely exposed. The peak-to-peak (P-P) source levels of the 10–gun array and 12–gun arrays that will be used for the Blanco Fracture project are 255 dB re 1 microPa (55 bar-m) and 257 dB dB re 1 microPa (68 bar-m), respectively. These are the nominal source levels applicable to downward propagation. The effective source level for horizontal propagation is lower.

Several important mitigating factors need to be considered when assessing airgun impacts on the marine environment: (1) Airgun arrays produce intermittent sounds, involving emission of a strong sound pulse for a small fraction of a second followed by several seconds of near silence. In contrast, some other acoustic sources produce sounds with lower peak levels, but their sounds are continuous or discontinuous but continuing for much longer durations than seismic pulses. (2) Airgun arrays are designed to transmit strong sounds downward through the seafloor, and the amount of sound transmitted in near-horizontal directions is considerably reduced. Nonetheless, they also emit sounds that travel horizontally toward non-target areas. (3) An airgun array is a distributed source, not a point source. The nominal source level is an estimate of the sound that would be measured from a theoretical point source emitting the same total energy as the airgun array. That figure is useful in calculating the expected received levels in the far field (i.e., at moderate and long distances). Because the airgun array is not a single point source, there is no one location within the near field (or anywhere else) where the received level is as high as the nominal source level.

The strengths of airgun pulses can be measured in different ways, and it is important to know which method is being used when interpreting quoted source or received levels. Geophysicists usually quote P-P levels, in bar-meters or dB re 1 microPa-m. The peak (zero-to-peak) level for the same pulse is typically about 6 dB less. In the biological literature, levels of received airgun pulses are often described based on the "average" or "root-mean-square" (rms) level over the duration of the pulse. The rms value for a given pulse is typically about 10 dB lower than the peak level, and 16 dB lower than the P-P value (Greene 1997, McCauley *et al.* 1998, 2000). A fourth measure that is being used more frequently is the energy level, in dB re 1 microPa^2-s. Because the pulses are less than 1 sec in duration, the numerical value of the energy is lower than the rms pressure level, but the units are different. Because the level of a given pulse will differ substantially depending on which of these measures is being applied, it is important to be

aware which measure is in use when interpreting any quoted pulse level. NMFS commonly references the rms levels when discussing levels of pulsed sounds that might harass marine mammals.

Seismic sound received at any given point will arrive via a direct path, indirect paths that include reflection from the sea surface and bottom, and often indirect paths including segments through the bottom sediments. Sounds propagating via indirect paths travel longer distances and often arrive later than sounds arriving via a direct path. These variations in travel time have the effect of lengthening the duration of the received pulse. At the source, seismic pulses are about 10 to 20 ms in duration. In comparison, the pulse duration as received at long horizontal distances can be much greater.

Another important aspect of sound propagation is that received levels of low-frequency underwater sounds diminish close to the surface because of pressure-release and interference phenomena that occur at and near the surface (Urick 1983, Richardson et al. 1995). Paired measurements of received airgun sounds at depths of 3 m (9.8 ft) vs. 9 or 18 m (29.5 or 59 ft) have shown that received levels are typically several decibels lower at 3 m (9.8. ft)(Greene and Richardson 1988). For a mammal whose auditory organs are within 0.5 or 1 m (1.6 or 3.3 ft) of the surface, the received level of the predominant low-frequency components of the airgun pulses would be further reduced.

Pulses of underwater sound from open-water seismic exploration are often detected 50 to 100 km (30 to 54 nm) from the source location (Greene and Richardson 1988, Burgess and Greene 1999). At those distances, the received levels on an approximate rms basis are low (below 120 dB re 1 microPa). However, faint seismic pulses are sometimes detectable at even greater ranges (e.g., Bowles *et al.*, 1994, Fox *et al.*, 2002). Considerably higher levels can occur at distances out to several kilometers from an operating airgun array. For the Blanco Fracture survey using 10–gun and 12–gun arrays, the distances at which seismic pulses are expected to diminish to received levels of 190 dB, 180 dB, 170 dB and 160 dB re 1 microPa rms are as follows:

TABLE 1. DISTANCES TO WHICH SOUND LEVELS MIGHT BE RECEIVED FROM THE AIRGUN ARRAYS PLANNED FOR USE IN THE BLANCO FRACTURE ZONE.

Airgun Array	RMS Radii (m/ft)			
	190 dB	180 dB	170 dB	160 dB
1 airgun	13/43	36/118	110/361	350/1148
10 airguns	200/656	550/1805	2000/6562	6500/21325
12 airguns	200/656	600/1968	2200/1718	7250/23786

Additional information is contained in the L-DEO application, especially in Appendix A.

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the NPO in the Blanco Fracture/Gorda Ridge area and its associated marine mammals can be found in the L-DEO application and a number of documents referenced in the L-DEO application, and is not repeated here. The main Blanco Transform survey site, and the Gorda Ridge contingency survey site, are located approximately 450 and 150 km (243 and 81 nm) offshore from Oregon, respectively, over water depths of 1600 to 5000 m (5250 to 16405 ft). Based on their preference for offshore (>2000 m (6560 ft) depth) and/or slope (200–2000 m or 656–6560 ft) waters, 19 of the 39 marine mammal species known for Oregon and Washington waters are considered likely to occur near the survey areas. An additional 14 species could occur, but are unlikely to do so in the project area because they are rare or uncommon in slope and offshore waters or they generally do not occur off Oregon or Washington. While these 14 species are addressed in the L-DEO application it is unlikely that they will occur in the survey area. An additional six species are not expected in the project area because their occurrence off Oregon is limited to coastal/shallow waters (gray whale (*Eschrichtius robustus*) and sea otter (*Enhydra lutris*)) or they are considered extralimital (beluga whale (*Delphinapterus leucas*), ringed seals (*Phoca hispida*), ribbon seal (*Phoca fasciata*), and hooded seal (*Cystophora cristata*)). As it is unlikely that these rare, vagrant mammals would occur during the short time period of this seismic survey, these latter six species are not addressed further as they are unlikely to be impacted by seismic signals from this research operation.

The six species of marine mammals expected to be most common in the deep pelagic or slope waters of the project area include the Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), northern right whale dolphin(*Lissodelphis borealis*), Risso's dolphin (*Grampus griseus*), short-beaked common dolphin (*Delphinus delphis*), Dall's porpoise (*Phocoenoides dalli*), and northern fur seal (*Callorhinus ursinus*)(Green *et al.*, 1992, 1993; Buchanan *et al.*, 2001; Carretta *et al.*, 2002; Barlow, 2003). The sperm whale (*Physeter macrocephalus*), pygmy sperm whale (*Kogia breviceps*), mesoplodont species (Blainville's beaked whale (*Mesoplondon densirostris*), Stejneger's beaked whale (*M. stejnegeri*), and Hubb's beaked whale (*M. carlhubbsi*)), Baird's beaked whale (*Berardius bairdii*), Cuvier's beaked whale (*Ziphius cavirostris*), and northern elephant seals (*Mirounga angustirostris*) are considered pelagic species but are generally uncommon in the waters near the survey area.

Of the five species of pinnipeds known to occur regularly in waters off Oregon, Washington, or northern California, only the northern fur seal and northern elephant seal are likely to be present in the pelagic waters of the proposed project area, located approximately 150–450 km (243–481 nm) offshore. The Steller sea lion (*Eumetopias jubatus*) may also occur there in small numbers. The California sea lion (*Zalophus californianus*)and harbor seal (*Phoca vitulina*) occur in shallow coastal or shelf waters off Oregon and Washington (Bonnell *et al.*, 1992, Green *et al.*, 1993, Buchanan *et al.*, 2001), and are not expected to be seen in the proposed study area. Sea otters were translocated to shallow coastal waters off the Olympic Peninsula of Washington, but are not found in the pelagic waters of the project area off Oregon. More detailed information on these species is contained in the L-DEO application and additional information is contained in Caretta *et al.*, (2002) which are available at: *http://www.nmfs.noaa.gov/prot_res/PR2/Small_Take/smalltake_info.htm#applications*, and *http://www.nmfs.noaa.gov/prot_res/*

PR2/Stock__Assessment__Program/sars.html, respectively.

Potential Effects on Marine Mammals

As outlined in several previous NMFS documents, the effects of noise on marine mammals are highly variable, and can be categorized as follows (based on Richardson et al. 1995):

(1) The noise may be too weak to be heard at the location of the animal (i.e., lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both);

(2) The noise may be audible but not strong enough to elicit any overt behavioral response;

(3) The noise may elicit reactions of variable conspicuousness and variable relevance to the well being of the marine mammal; these can range from temporary alert responses to active avoidance reactions such as vacating an area at least until the noise event ceases;

(4) Upon repeated exposure, a marine mammal may exhibit diminishing responsiveness (habituation), or disturbance effects may persist; the latter is most likely with sounds that are highly variable in characteristics, infrequent and unpredictable in occurrence, and associated with situations that a marine mammal perceives as a threat;

(5) Any anthropogenic noise that is strong enough to be heard has the potential to reduce (mask) the ability of a marine mammal to hear natural sounds at similar frequencies, including calls from conspecifics, and underwater environmental sounds such as surf noise;

(6) If mammals remain in an area because it is important for feeding, breeding or some other biologically important purpose even though there is chronic exposure to noise, it is possible that there could be noise-induced physiological stress; this might in turn have negative effects on the well-being or reproduction of the animals involved; and

(7) Very strong sounds have the potential to cause temporary or permanent reduction in hearing sensitivity. In terrestrial mammals, and presumably marine mammals, received sound levels must far exceed the animal's hearing threshold for there to be any temporary threshold shift (TTS). For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound. Received sound levels must be even higher for there to be risk of permanent hearing impairment. In addition, intense acoustic or explosive events may cause trauma to tissues associated with organs vital for hearing, sound production, respiration and other functions. This trauma may include minor to severe hemorrhage.

Effects of Seismic Surveys on Marine Mammals

The L-DEO application provides the following information on what is known about the effects on marine mammals of the types of seismic operations planned by L-DEO. The types of effects considered here are (1) masking, (2) disturbance, and (3) potential hearing impairment and other physical effects. Additional discussion on species specific effects can be found in the L-DEO application for taking marine mammals incidental to this activity.

Masking

Masking effects of pulsed sounds on marine mammal calls and other natural sounds are expected to be limited, although there are very few specific data on this. Seismic sounds are short pulses occurring for less than 1 sec every 20 or 60–90 sec in this project. Sounds from the multibeam sonar are very short pulses, occurring for 1–10 msec once every 1 to 15 sec, depending on water depth. (During operations in deep water, the duration of each pulse from the multibeam sonar as received at any one location would actually be only $1/5^{th}$ or at most $2/5^{th}$ of 1–10 msec, given the segmented nature of the pulses.) Some whales are known to continue calling in the presence of seismic pulses. Their calls can be heard between the seismic pulses (Richardson *et al.*, 1986; McDonald *et al.*, 1995; Greene *et al.*, 1999). Although there has been one report that sperm whales cease calling when exposed to pulses from a very distant seismic ship (Bowles *et al.*, 1994), a recent study reports that sperm whales continued calling in the presence of seismic pulses (Madsen *et al.*, 2002). Masking effects of seismic pulses are expected to be negligible in the case of the smaller odontocete cetaceans, given the intermittent nature of seismic pulses and that sounds important to these species are predominantly at much higher frequencies than are airgun sounds.

Most of the energy in the sound pulses emitted by airgun arrays is at low frequencies, with strongest spectrum levels below 200 Hz and considerably lower spectrum levels above 1000 Hz. These frequencies are mainly used by mysticetes, but not by odontocetes or pinnipeds. An industrial sound source will reduce the effective communication or echolocation distance only if its frequency is close to that of the cetacean signal. If little or no overlap occurs between the industrial noise and the frequencies used, as in the case of many marine mammals vs. airgun sounds, communication and echolocation are not expected to be disrupted. Furthermore, the discontinuous nature of seismic pulses makes significant masking effects unlikely even for mysticetes.

A few cetaceans are known to increase the source levels of their calls in the presence of elevated sound levels, or possibly to shift their peak frequencies in response to strong sound signals (Dahlheim, 1987; Au, 1993; Lesage *et al.*, 1999; Terhune, 1999; as reviewed in Richardson *et al.*, 1995). These studies involved exposure to other types of anthropogenic sounds, not seismic pulses, and it is not known whether these types of responses ever occur upon exposure to seismic sounds. If so, these adaptations, along with directional hearing and preadaptation to tolerate some masking by natural sounds (Richardson *et al.*, 1995), would all reduce the importance of masking.

Disturbance by Seismic Surveys

Disturbance includes a variety of effects, including subtle changes in behavior, more conspicuous dramatic changes in activities, and displacement. However, there are difficulties in defining which marine mammals should be counted as "taken by harassment". For many species and situations, scientists do not have detailed information about their reactions to noise, including reactions to seismic (and sonar) pulses. Behavioral reactions of marine mammals to sound are difficult to predict. Reactions to sound, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors. If a marine mammal does react to an underwater sound by changing its behavior or moving a small distance, the impacts of the change may not rise to the level of disruption of a behavioral pattern. However, if a sound source would displace marine mammals from an important feeding or breeding area for a prolonged period, such a disturbance would constitute Level B harassment. Given the many uncertainties in predicting the quantity and types of impacts of noise on marine mammals, scientists often resort to estimating how many mammals may be present within a particular distance of industrial activities or exposed to a particular level of industrial sound. This likely overestimates the numbers of marine mammals that are affected in some biologically important manner. The sound criteria used to estimate how many marine mammals might be harassed behaviorally by the seismic

survey are based on behavioral observations during studies of several species. However, information is lacking for many species.

Hearing Impairment and Other Physical Effects

Temporary or permanent hearing impairment is a possibility when marine mammals are exposed to very strong sounds, but there has been no specific documentation of this for marine mammals exposed to airgun pulses. Current NMFS policy regarding exposure of marine mammals to high-level sounds is that cetaceans and pinnipeds should not be exposed to impulsive sounds ≥180 and 190 dB re 1 microPa (rms), respectively (NMFS 2000). Those criteria have been used in defining the safety (shut down) radii for seismic surveys. However, those criteria were established before there were any data on the minimum received levels of sounds necessary to cause auditory impairment in marine mammals. As discussed in the L-DEO application and summarized here,

1. The 180 dB criterion for cetaceans is probably quite precautionary, i.e., lower than necessary to avoid TTS let alone permanent auditory injury, at least for delphinids.

2. The minimum sound level necessary to cause permanent hearing impairment is higher, by a variable and generally unknown amount, than the level that induces barely-detectable TTS.

3. The level associated with the onset of TTS is often considered to be a level below which there is no danger of permanent damage.

Several aspects of the planned monitoring and mitigation measures for this project are designed to detect marine mammals occurring near the airgun array (and multibeam sonar), and to avoid exposing them to sound pulses that might cause hearing impairment. In addition, many cetaceans are likely to show some avoidance of the area with ongoing seismic operations. In these cases, the avoidance responses of the animals themselves will reduce or avoid the possibility of hearing impairment.

Non-auditory physical effects may also occur in marine mammals exposed to strong underwater pulsed sound. Possible types of non-auditory physiological effects or injuries that theoretically might occur in mammals close to a strong sound source include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage. It is possible that some marine mammal species (i.e., beaked whales) may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds. The following paragraphs discuss the possibility of TTS, permanent threshold shift (PTS), and non-auditory physical effects.

TTS

TTS is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter, 1985). When an animal experiences TTS, its hearing threshold rises and a sound must be stronger in order to be heard. TTS can last from minutes or hours to (in cases of strong TTS) days. Richardson *et al.* (1995) notes that the magnitude of TTS depends on the level and duration of noise exposure, among other considerations. For sound exposures at or somewhat above the TTS threshold, hearing sensitivity recovers rapidly after exposure to the noise ends. Little data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals.

For toothed whales exposed to single short pulses, the TTS threshold appears to be, to a first approximation, a function of the energy content of the pulse (Finneran *et al.*, 2002). Given the available data, the received level of a single seismic pulse might need to be on the order of 210 dB re 1 microPa rms (approx. 221 226 dB pk pk) in order to produce brief, mild TTS. Exposure to several seismic pulses at received levels near 200 205 dB (rms) might result in slight TTS in a small odontocete, assuming the TTS threshold is (to a first approximation) a function of the total received pulse energy (Fineran *et al.*, 2002). Seismic pulses with received levels of 200 205 dB or more are usually restricted to a radius of no more than 100 m (328 ft) around a seismic vessel.

There are no data, direct or indirect, on levels or properties of sound that are required to induce TTS in any baleen whale. TTS thresholds for pinnipeds exposed to brief pulses (single or multiple) have not been measured, although exposures up to 183 db re 1 microPa (rms) have been shown to be insufficient to induce TTS in California sea lions (Fineran et al. (2003). However, prolonged exposures show that some pinnipeds may incur TTS at somewhat lower received levels than do small odontocetes exposed for similar durations (Kastak *et al.*, 1999; Ketten *et al.*, 2001, Au *et al.*, 2000).

A marine mammal within a radius of ≤100 m (≤ 328 ft) around a typical array of operating airguns might be exposed to a few seismic pulses with levels of ≥205 dB, and possibly more pulses if the mammal moved with the seismic vessel. As noted previously, most cetacean species tend to avoid operating airguns, although not all individuals do so. In addition, ramping up airgun arrays, which is standard operational protocol for L-DEO and other seismic operators, should allow cetaceans to move away from the seismic source and to avoid being exposed to the full acoustic output of the airgun array. It is unlikely that these cetaceans would be exposed to airgun pulses at a sufficiently high level for a sufficiently long period to cause more than mild TTS, given the relative movement of the vessel and the marine mammal. However, TTS would be more likely in any odontocetes that bow-ride or otherwise linger near the airguns. While bow-riding, odontocetes would be at or above the surface, and thus not exposed to strong sound pulses given the pressure-release effect at the surface. However, bow-riding animals generally dive below the surface intermittently. If they did so while bow-riding near airguns, they would be exposed to strong sound pulses, possibly repeatedly. If some cetaceans did incur TTS through exposure to airgun sounds, this would very likely be a temporary and reversible phenomenon.

Currently, NMFS believes that, whenever possible to avoid Level A harassment, cetaceans should not be exposed to pulsed underwater noise at received levels exceeding 180 dB re 1 microPa (rms). The corresponding limit for pinnipeds has been set at 190 dB. The predicted 180- and 190–dB distances for the airgun arrays operated by L-DEO during this activity are summarized elsewhere in this document. These sound levels are not considered to be the levels at or above which TTS might occur. Rather, they are the received levels above which, in the view of a panel of bioacoustics specialists convened by NMFS (at a time before TTS measurements for marine mammals started to become available), one could not be certain that there would be no injurious effects, auditory or otherwise, to marine mammals. As noted here, TTS data that are now available imply that, at least for dolphins, TTS is unlikely to occur unless the dolphins are exposed to airgun pulses substantially stronger that 180 dB re 1 microPa (rms).

It has also been shown that most whales tend to avoid ships and associated seismic operations. Thus, whales will likely not be exposed to such high levels of airgun sounds. Because of the slow ship speed, any whales close to the trackline could move away before the sounds become sufficiently strong for there to be any potential for hearing impairment.

Therefore, there is little potential for whales being close enough to an array to experience TTS. In addition ramping up airgun arrays, which has become standard operational protocol for many seismic operators including L-DEO, should allow cetaceans to move away from the seismic source and to avoid being exposed to the full acoustic output of the airgun array.

Permanent Threshold Shift (PTS)

When PTS occurs, there is physical damage to the sound receptors in the ear. In some cases, there can be total or partial deafness, while in other cases, the animal has an impaired ability to hear sounds in specific frequency ranges. Physical damage to a mammal's hearing apparatus can occur if it is exposed to sound impulses that have very high peak pressures, especially if they have very short rise times (time required for sound pulse to reach peak pressure from the baseline pressure). Such damage can result in a permanent decrease in functional sensitivity of the hearing system at some or all frequencies.

Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage in terrestrial mammals. However, very prolonged exposure to sound strong enough to elicit TTS, or shorter-term exposure to sound levels well above the TTS threshold, can cause PTS, at least in terrestrial mammals (Kryter 1985). Relationships between TTS and PTS thresholds have not been studied in marine mammals but are assumed to be similar to those in humans and other terrestrial mammals. The low-to-moderate levels of TTS that have been induced in captive odontocetes and pinnipeds during recent controlled studies of TTS have been confirmed to be temporary, with no measurable residual PTS (Kastak *et al.*, 1999; Schlundt *et al.*, 2000, Finneran *et al.*, 2002; Nachtigall *et al.*, 2003). In terrestrial mammals, the received sound level from a single non-impulsive sound exposure must be far above the TTS threshold for any risk of permanent hearing damage (Kryter, 1994; Richardson *et al.*, 1995). For impulse sounds with very rapid rise times (e.g., those associated with explosions or gunfire), a received level not greatly in excess of the TTS threshold may start to elicit PTS. Rise times for airgun pulses are rapid, but less rapid than for explosions.

Some factors that contribute to onset of PTS are as follows: (1) exposure to single very intense noises, (2) repetitive exposure to intense sounds that individually cause TTS but not PTS, and (3) recurrent ear infections or (in captive animals) exposure to certain drugs.

Cavanagh (2000) has reviewed the thresholds used to define TTS and PTS. Based on his review and SACLANT (1998), it is reasonable to assume that PTS might occur at a received sound level 20 dB or more above that which induces mild TTS. However, for PTS to occur at a received level only 20 dB above the TTS threshold, it is probable that the animal would have to be exposed to the strong sound for an extended period.

Sound impulse duration, peak amplitude, rise time, and number of pulses are the main factors thought to determine the onset and extent of PTS. Based on existing data, Ketten (1994) has noted that the criteria for differentiating the sound pressure levels that result in PTS (or TTS) are location and species-specific. PTS effects may also be influenced strongly by the health of the receiver's ear.

Given that marine mammals are unlikely to be exposed to received levels of seismic pulses that could cause TTS, it is highly unlikely that they would sustain permanent hearing impairment. If we assume that the TTS threshold for exposure to a series of seismic pulses may be on the order of 220 dB re 1 microPa (pk-pk) in odontocetes, then the PTS threshold might be about 240 dB re 1 microPa (pk-pk). In the units used by geophysicists, this is 10 bar-m. Such levels are found only in the immediate vicinity of the largest airguns (Richardson *et al.*, 1995: Caldwell and Dragoset, 2000). It is very unlikely that an odontocete would remain within a few meters of a large airgun for sufficiently long to incur PTS. The TTS (and thus PTS) thresholds of baleen whales and pinnipeds may be lower, and thus may extend to a somewhat greater distance. However, baleen whales generally avoid the immediate area around operating seismic vessels, so it is unlikely that a baleen whale could incur PTS from exposure to airgun pulses. Some pinnipeds do not show strong avoidance of operating airguns. However, pinnipeds are expected to be (at most) uncommon in the Blanco Fracture survey area. However, although it is unlikely that the planned seismic surveys could cause PTS in any marine mammals, caution is warranted given the limited knowledge about noise-induced hearing damage in marine mammals, particularly baleen whales.

Strandings and Mortality

Marine mammals close to underwater detonations of high explosives can be killed or severely injured, and the auditory organs are especially susceptible to injury (Ketten *et al.*, 1993; Ketten, 1995). Airgun pulses are less energetic and have slower rise times, and, while there is no documented evidence that airgun arrays can cause serious injury, death, or stranding, the association of mass strandings of beaked whales with naval exercises and, more recently, an L-DEO seismic survey has raised the possibility that beaked whales may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds.

In March 2000, several beaked whales that had been exposed to repeated pulses from high intensity, mid-frequency military sonars stranded and died in the Providence Channels of the Bahamas Islands, and were subsequently found to have incurred cranial and ear damage (NOAA and USN 2001). Based on post-mortem analyses, it was concluded that an acoustic event caused hemorrhages in and near the auditory region of some beaked whales. These hemorrhages occurred before death. They would not necessarily have caused death or permanent hearing damage, but could have compromised hearing and navigational ability (NOAA and USN 2001). The researchers concluded that acoustic exposure caused this damage and triggered stranding, which resulted in overheating, cardiovascular collapse, and physiological shock that ultimately led to the death of the stranded beaked whales. During the event, five naval vessels used their AN/SQS–53C or -56 hull-mounted active sonars for a period of 16 hours. The sonars produced narrow (<100 Hz) bandwidth signals at center frequencies of 2.6 and 3.3 kHz (-53C), and 6.8 to 8.2 kHz (-56). The respective source levels were usually 235 and 223 dB re 1 μ Pa, but the -53C briefly operated at an unstated but substantially higher source level. The unusual bathymetry and constricted channel where the strandings occurred were conducive to channeling sound. This, and the extended operations by multiple sonars, apparently prevented escape of the animals to the open sea. In addition to the strandings, there are reports that beaked whales were no longer present in the Providence Channel region after the event, suggesting that other beaked whales either abandoned the area or perhaps died at sea (Balcomb and Claridge, 2001).

Other strandings of beaked whales associated with operation of military sonars have also been reported (e.g., Simmonds and Lopez-Jurado, 1991; Frantzis, 1998). In these cases, it was

not determined whether there were noise-induced injuries to the ears or other organs. Another stranding of beaked whales (15 whales) happened on 24–25 September 2002 in the Canary Islands, where naval maneuvers were taking place. Jepson et al. (2003) concluded that cetaceans might be subject to decompression injury in some situations. If so, this might occur if the mammals ascend unusually quickly when exposed to aversive sounds. Previously, it was widely assumed that diving marine mammals are not subject to the bends or air embolism.

It is important to note that seismic pulses and mid-frequency sonar pulses are quite different. Sounds produced by the types of airgun arrays used to profile sub-sea geological structures are broadband with most of the energy below 1 kHz. Typical military mid-frequency sonars operate at frequencies of 2 to 10 kHz, generally with a relatively narrow bandwidth at any one time (though the center frequency may change over time). Because seismic and sonar sounds have considerably different characteristics and duty cycles, it is not appropriate to assume that there is a direct connection between the effects of military sonar and seismic surveys on marine mammals. However, evidence that sonar pulses can, in special circumstances, lead to hearing damage and, indirectly, mortality suggests that caution is warranted when dealing with exposure of marine mammals to any high-intensity pulsed sound.

In addition to the sonar-related strandings, there was a September, 2002 stranding of two Cuviers beaked whales in the Gulf of California (Mexico) when a seismic survey by the *Ewing* was underway in the general area (Malakoff, 2002). The airgun array in use during that project was the *Ewing*'s 20–gun 8490–in^3 array. This might be a first indication that seismic surveys can have effects, at least on beaked whales, similar to the suspected effects of naval sonars. However, the evidence linking the Gulf of California strandings to the seismic surveys is inconclusive, and to this date is not based on any physical evidence (Hogarth, 2002; Yoder, 2002). The ship was also operating its multi-beam bathymetric sonar at the same time but this sonar had much less potential than these naval sonars to affect beaked whales. Although the link between the Gulf of California strandings and the seismic (plus multi-beam sonar) survey is inconclusive, this plus the various incidents involving beaked whale strandings associated with naval exercises suggests a need for caution in conducting seismic surveys in areas occupied by beaked whales.

Non-auditory Physiological Effects.

Possible types of non-auditory physiological effects or injuries that might theoretically occur in marine mammals exposed to strong underwater sound might include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage. There is no evidence that any of these effects occur in marine mammals exposed to sound from airgun arrays. However, there have been no direct studies of the potential for airgun pulses to elicit any of these effects. If any such effects do occur, they would probably be limited to unusual situations when animals might be exposed at close range for unusually long periods.

Long-term exposure to anthropogenic noise may have the potential to cause physiological stress that could affect the health of individual animals or their reproductive potential, which could theoretically cause effects at the population level (Gisner (ed.), 1999). However, there is essentially no information about the occurrence of noise-induced stress in marine mammals. Also, it is doubtful that any single marine mammal would be exposed to strong seismic sounds for sufficiently long that significant physiological stress would develop. This is particularly so in the case of broad-scale seismic surveys where the tracklines are generally not as closely spaced as in many industry seismic surveys.

Gas-filled structures in marine animals have an inherent fundamental resonance frequency. If stimulated at this frequency, the ensuing resonance could cause damage to the animal. There may also be a possibility that high sound levels could cause bubble formation in th blood of diving mammals that in turn could cause an air embolism, tissue separation, and high, localized pressure in nervous tissue (Gisner [ed], 1999, Houser *et al.*, 2001). In 2002, NMFS held a workshop (Gentry [ed.], 2002) to discuss whether the stranding of beaked whales in the Bahamas in 2000 might have been related to air cavity resonance or bubble formation in tissues caused by exposure to noise from naval sonar. A panel of experts concluded that resonance in air-filled structures was not likely to have caused this stranding. Among other reasons, the air spaces in marine mammals are too large to be susceptible to resonant frequencies emitted by mid- or low-frequency sonar; lung tissue damage has not been observed in any mass, multi-species stranding of beaked whales; and the duration of sonar pings is likely too short to induce vibrations that could damage tissues (Gentry (ed.) 2002). Opinions were less conclusive about the possible role of gas (nitrogen) bubble formation/growth in the Bahamas stranding of beaked whales. Workshop participants did not rule out the possibility that bubble formation/growth played a role in the stranding and participants acknowledged that more research is needed in this area. The only available information on acoustically-mediated bubble growth in marine mammals is modeling that assumes prolonged exposure to sound.

In summary, little is known about the potential for seismic survey sounds to cause either auditory impairment or other non-auditory physical effects in marine mammals. Available data suggest that such effects, if they occur at all, would be limited to short distances from the sound source. However, the available data do not allow for meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in these ways. Marine mammals that show behavioral avoidance of seismic vessels, including most baleen whales, some odontocetes, and some pinnipeds, are unlikely to incur auditory impairment or other physical effects.

Possible Effects of Mid-Frequency Sonar Signals

A multi-beam bathymetric sonar (Atlas Hydrosweep DS–2, 15.5–kHz) and a sub-bottom profiler will be operated from the source vessel during much of the planned survey. Details about these sonars were provided previously in this document.

Navy sonars that have been linked to avoidance reactions and stranding of cetaceans generally (1) are more powerful than the Atlas Hydrosweep, (2) have a longer pulse duration, and (3) are directed close to horizontally (vs. downward for the Hydrosweep). The area of possible influence of the Hydrosweep is much smaller - a narrow band below the source vessel. For the Hydrosweep there is no horizontal propagation as these signals project at an angle of approximately 45 degrees from the ship. For the deep-water mode, under the ship the 160- and 180–dB zones are estimated to be 3200 m (10500 ft) and 610 m (2000 ft), respectively. However, the beam width of the Hydrosweep signal is only 2.67 degrees fore and aft of the vessel, meaning that a marine mammal diving could receive at most 1–2 signals from the Hydrosweep and a marine mammal on the surface would be unaffected. Marine

mammals that do encounter the Hydrosweep at close range are unlikely to be subjected to repeated pulses because of the narrow fore-aft width of the beam, and will receive only limited amounts of pulse energy because of the short pulses and vessel speed. Therefore, as harassment or injury from pulsed sound is a function of total energy received, the actual harassment or injury threshold for Hydrosweep signals (approximately 10 ms) such sounds would be at a much higher dB level than that for longer duration pulses such as seismic signals. As a result, NMFS believes that marine mammals are unlikely to be harassed or injured from the multibeam sonar.

Masking by Mid-Frequency Sonar Signals

Marine mammal communications will be not masked appreciably by the multibeam sonar signals or the sub-bottom profiler given the low duty cycle and directionality of the sonars and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of baleen whales, the sonar signals do not overlap with the predominant frequencies in the calls, which would avoid significant masking.

Behavioral Responses Resulting from Mid-Frequency Sonar Signals

Behavioral reactions of free-ranging marine mammals to military and other sonars appear to vary by species and circumstance. Observed reactions have included silencing and dispersal by sperm whales (Watkins *et al.*, 1985), increased vocalizations and no dispersal by pilot whales (Rendell and Gordon, 1999), and the previously-mentioned beachings by beaked whales. Also, Navy personnel have described observations of dolphins bow-riding adjacent to bow-mounted mid-frequency sonars during sonar transmissions. However, all of these observations are of limited relevance to the present situation. Pulse durations from these sonars were much longer than those of the L-DEO multibeam sonar, and a given mammal would have received many pulses from the naval sonars. During L-DEO's operations, the individual pulses will be very short, and a given mammal would not receive many of the downward-directed pulses as the vessel passes by.

Captive bottlenose dolphins and a white whale exhibited changes in behavior when exposed to 1–sec pulsed sounds at frequencies similar to those that will be emitted by the multi-beam sonar used by L-DEO and to shorter broadband pulsed signals. Behavioral changes typically involved what appeared to be deliberate attempts to avoid the sound exposure (Schlundt *et al.*, 2000; Finneran *et al.*, 2002). The relevance of these data to free-ranging odontocetes is uncertain and in any case the test sounds were quite different in either duration or bandwidth as compared to those from a bathymetric sonar.

L-DEO and NMFS are not aware of any data on the reactions of pinnipeds to sonar sounds at frequencies similar to those of the 15.5 kHz frequency of the *Ewing*'s multibeam sonar. Based on observed pinniped responses to other types of pulsed sounds, and the likely brevity of exposure to the bathymetric sonar sounds, pinniped reactions are expected to be limited to startle or otherwise brief responses of no lasting consequences to the individual animals. Finally, the pulsed signals from the sub-bottom profiler are much weaker than those from the airgun array and the multibeam sonar. Therefore, behavioral responses are not expected.

Hearing Impairment and Other Physical Effects

Given recent stranding events that have been associated with the operation of naval sonar, there is much concern that sonar noise can cause serious impacts to marine mammals (for discussion see Effects of Seismic Surveys). It is worth noting that the multi-beam sonar proposed for use by L-DEO is quite different than sonars used for navy operations. Pulse duration of the multi-beam sonar is very short relative to the naval sonars. Also, at any given location, an individual marine mammal would be in the beam of the multi-beam sonar for much less time given the generally downward orientation of the beam and its narrow fore-aft beamwidth. (Navy sonars often use near-horizontally-directed sound.) These factors would all reduce the sound energy received from the multi-beam sonar rather drastically relative to that from the sonars used by the Navy. Therefore, hearing impairment by the multi-beam bathymetric sonar is unlikely.

Source levels of the sub-bottom profiler are much lower than those of the airguns and the multi-beam sonar. Sound levels from a sub-bottom profiler similar to the one on the Ewing were estimated to decrease to 180 dB re 1 microPa (rms) at 8 m (26 ft) horizontally from the source (Burgess and Lawson 2000), and at approximately 18 m downward from the source. Furthermore, received levels of pulsed sounds that are necessary to cause temporary or especially permanent hearing impairment in marine mammals appear to be higher than 180 dB (see earlier discussion). Thus, it is unlikely that the sub-bottom profiler produces pulse levels strong enough to cause hearing impairment or other physical injuries even in an animal that is (briefly) in a position near the source.

The sub-bottom profiler is usually operated simultaneously with other higher-power acoustic sources. Many marine mammals will move away in response to the approaching higher-power sources or the vessel itself before the mammals would be close enough for there to be any possibility of effects from the less intense sounds from the sub-bottom profiler. In the case of mammals that do not avoid the approaching vessel and its various sound sources, mitigation measures that would be applied to minimize effects of the higher-power sources would further reduce or eliminate any minor effects of the sub-bottom profiler.

Estimates of Take by Harassment for the Blanco Fracture Zone Survey

Although information contained in this document indicates that injury to marine mammals from seismic sounds potentially occurs at sound pressure levels higher than 180 and 190 dB, NMFS' current criteria for onset of Level A harassment of cetaceans and pinnipeds from impulse sound are, respectively, 180 and 190 re 1 microPa rms. The rms level of a seismic pulse is typically about 10 dB less than its peak level (Greene, 1997; McCauley *et al.*, 1998, 2000a). The criterion for Level B harassment onset is 160 dB.

Given the proposed mitigation (see Mitigation later in this document), all anticipated takes involve a temporary change in behavior that may constitute Level B harassment. The proposed mitigation measures will minimize or eliminate the possibility of Level A harassment. L-DEO has calculated the "best estimates" for the numbers of animals that could be taken by level B harassment during the proposed Blanco Fracture seismic survey using data on marine mammal density and abundance from marine mammal surveys in the region, and estimates of the size of the affected area, as shown in the predicted RMS radii table (Table 1).

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TABLE 2. Estimates of the possible numbers of marine mammal exposures to different sound levels, and the numbers of different individuals that might be exposed, during L-DEO's proposed main Blanco Transform seismic survey and the Gorda Ridge contingency survey (combined) off Oregon in July 2004. The column of numbers in boldface shows the numbers of "takes" for which authorization is requested.[a]

Species	Number of Exposures to Sound Levels ≥160 dB (≥170 dB, Delphinids/Pinnipeds Only)				Number of Individuals Exposed to Sound Levels ≥160 dB (≥170 dB, Delphinids/Pinnipeds Only)					
	Best Estimate		Maximum Estimate		Best Estimate				Maximum Estimate		Requested Take Authorization
					Number		% of Regional Pop'n[b]				
Physeteridae											
Sperm whale	*17*		*27*		*5*		*0.0*		*7*		**27**
Pygmy sperm whale	11		29		3		*0.1*		8		**29**
Dwarf sperm whale	0		0		0		NA		0		**5**
Ziphiidae											
Cuvier's beaked whale	0		0		0		0.0		0		**2**
Baird's beaked whale	5		8		1		0.0		2		**8**
Blainville's beaked whale							NA				**20**
Hubb's beaked whale							NA				**54**
Stejneger's beaked whale							NA				**54**
Mesoplodon sp. (unidentified)	49		128		13		0.1		35		
Delphinidae											
Bottlenose dolphin	0	0	0	0	0	0	0.0		0	0	**10**
Striped dolphin	2	(1)	4	(1)	1	0	0.0		1	0	**10**
Short-beaked common dolphin	225	(69)	370	(114)	61	(25)	0.0		101	(40)	**370**
Pacific white-sided dolphin	564	(173)	641	(197)	154	(62)	0.3		175	(70)	**641**
Northern right-whale dolphin	423	(130)	599	(184)	115	(46)	0.6		163	(65)	**599**
Risso's dolphin	425	(130)	481	(148)	116	(46)	0.7		131	(52)	**481**
False killer whale	0	0	0	0	0	0	0.0		0	0	**10**
Killer whale	43	(13)	69	(21)	12	(5)	0.1		19	(7)	**69**
Short-finned pilot whale	0	0	0	0	0	0	0.0		0	0	**50**
Phocoenidae											
Harbor porpoise	0		0		0		0.0		0		**5**
Dall's porpoise	2021		4511		551		0.5		1230		**4511**
Balaenopteridae											
North Pacific right whale	*0*		*0*		0		*0.0*		*0*		**2**
Humpback whale	*9*		*21*		*2*		*0.0*		*6*		**21**
Minke whale	14		25		4		*0.0*		7		**25**
Sei whale	*0*		*0*		0		*0.0*		*0*		**2**
Fin whale	*20*		*23*		5		*0.1*		*6*		**23**
Blue whale	*2*		*6*		1		*0.0*		*2*		**6**

TABLE 2. continued

Pinnipeds										
Northern fur seal	288	(88)	1833	(563)	79	(31)	*0.0*	500	(200)	**1833**
California sea lion										**5**
Steller sea lion										***10***
Harbor seal										**5**
Northern elephant seal	53	(16)	53	(16)	15	(6)	*0.0*	15	(6)	**53**

[a] Best estimate and maximum estimates of density are from Table 3.
[b] Regional population size estimates are from Table 2.
[c] NA indicates that regional population estimates are not available.

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These estimates are based on a consideration of the number of marine mammals that might be exposed to sound levels greater than 160 dB, the criterion for the onset of Level B harassment, by operations with the 10- and 12–gun array planned to be used for this project. The anticipated radius of influence of the multi-beam sonar is less than that for the airgun array, so it is assumed that any marine mammals close enough to be affected by the multi-beam sonar would already be affected by the airguns. Therefore, no additional incidental takings are included for animals that might be affected by the multi-beam sonar.

Table 2 explains the corrected density estimates as well as the best estimate of the numbers of each species that would be exposed to seismic sounds greater than 160 dB.

Conclusions—Effects on Cetaceans

Strong avoidance reactions by several species of mysticetes to seismic vessels have been observed at ranges up to 6–8 km (3.2–4.3 nm) and occasionally as far as 20–30 km (10.8–16.2 nm) from the source vessel. However, reactions at the longer distances appear to be atypical of most species and situations. Furthermore, if they are encountered, the numbers of mysticetes estimated to occur within the 160–dB isopleth at the Blanco Fracture and Gorda Ridge survey sites are expected to be low. In addition, the estimated numbers presented in Table 2 are considered overestimates of actual numbers for two primary reasons. First, the number of line kilometers used to estimate the number of exposures and individuals exposed assumes that both the main and contingency surveys will be completed; this is highly unlikely given the likelihood that some inclement weather, equipment malfunction, and/or implementation of mitigative shut downs or power downs will occur. Secondly, the estimated 160–dB radii used here are probably overestimates of the actual 160–dB radii at deep water sites such as the Blanco Fracture and Gorda Ridge sites (Tolstoy *et al.*, 2004).

Odontocete reactions to seismic pulses, or at least the reactions of dolphins, are expected to extend to lesser distances than are those of mysticetes. Odontocete low-frequency hearing is less sensitive than that of mysticetes, and dolphins are often seen from seismic vessels. In fact, there are documented instances of dolphins approaching active seismic vessels. However, dolphins as well as some other types of odontocetes sometimes show avoidance responses and/or other changes in behavior when near operating seismic vessels.

Taking into account the mitigation measures that are planned, effects on cetaceans are generally expected to be limited to avoidance of the area around the seismic operation and short-term changes in behavior, falling within the MMPA definition of Level B harassment. Furthermore, the estimated numbers of animals potentially exposed to sound levels sufficient to cause appreciable disturbance are very low percentages of the population sizes in the NPO generally.

Based on the 160–dB criterion, the best estimates of the numbers of individual cetaceans that may be exposed to sounds ≥160 dB re 1 microPa (rms) represent 0 to 0.7 percent of the populations of each species in the NPO. For species listed as endangered under the Endangered Species Act (ESA), this includes no North Pacific right whales or sei whales; less than 0.02 percent of the NPO populations of sperm, humpback and blue whales; and 0.1 percent of the fin whale population (Table 2). In the cases of mysticetes, beaked whales, and sperm whales, these potential reactions are expected to involve no more than very small numbers (0 to 7) of individual cetaceans. Sperm and fin whales are the endangered species that are most likely to be exposed, and their NPO populations are approximately 26,053 and 8520, respectively (Ohsumi and Wada 1974, Carretta et al. 2002).

It is highly unlikely that any right whales will be exposed to seismic sounds ≥160 dB re 1 microPa (rms). This conclusion is based on the rarity of this species off Oregon/Washington and in the NPO generally (less than 100, Carretta *et al.* 2002), and that the remnant population of this species apparently migrates to more northerly areas during the summer. However, L-DEO has requested an authorization to expose up to two North Pacific right whales to ≤160 dB, given the possibility (however unlikely) of encountering one or more of this endangered species. If a right whale is sighted by the vessel-based observers, the airguns will be shut down (not just powered down) regardless of the distance of the whale from the airgun array.

Larger numbers of delphinids may be affected by the proposed main and contingency seismic studies, but the population sizes of species likely to occur in the operating area are large, and the numbers potentially affected are small relative to the population sizes. As indicated in Table 2, the best estimate of number of individual delphinids that might be exposed to sounds less than or equal to 160 dB re 1 microPa (rms) represents a small percentage of the populations of each species occurring there.

Varying estimates of the numbers of marine mammals that might be exposed to airgun sounds during the August 2004 seismic surveys off Oregon have been presented, depending on the specific exposure criteria, calculation procedures (exposures vs. individuals), and density criteria used (best vs. maximum). The requested "take authorization" for each species is based on the estimated maximum number of exposures to ≤160 dB re 1 microPa (rms). That figure likely overestimates (in most cases by a large margin) the actual number of animals that will be exposed to these sounds; the reasons for this are outlined above. Even so, the

combined estimates for the main and contingency surveys are quite low percentages of the population sizes. Also, these relatively short-term exposures are unlikely to result in any long-term negative consequences for the individuals or their populations.

The many cases of apparent tolerance by cetaceans of seismic exploration, vessel traffic, and some other human activities show that co-existence is possible. Mitigation measures such as controlled speed, course alternation, look outs, non-pursuit, ramp ups, and power downs or shut downs when marine mammals are seen within defined ranges should further reduce short-term reactions, and minimize any effects on hearing sensitivity. In all cases, the effects are expected to be short-term, with no lasting biological consequence.

In light of the type of take expected and the small percentages of affected stocks, the action is expected to have no more than a negligible impact on the affected species or stocks of marine mammals. In addition, mitigation measures such as controlled vessel speed, course alteration, look-outs, ramp-ups, and power-downs when marine mammals are seen within defined ranges (see Mitigation) should further reduce short-term reactions to disturbance, and minimize any effects on hearing sensitivity.

Conclusions—Effects on Pinnipeds

Two pinniped species, the northern fur seal and the northern elephant seal, are likely to be encountered at the survey sites, as they are associated with pelagic slope and offshore waters off Oregon. In addition, it is possible (although unlikely) that a small number of Steller sea lions, California sea lions, and/or harbor seals may also be encountered, most likely at the Gorda Ridge survey area located closer to shore in continental slope water; these three species tend to inhabit primarily coastal and shelf waters. An estimated 79 individual fur seals and 15 individual elephant seals may be exposed to airgun sounds with received levels ≥160 dB re 1 microPa (rms). It is most likely that no California sea lions, Steller sea lions, or harbor seals will be exposed to such sounds. Similar to cetaceans, the estimated numbers of pinnipeds that may be exposed to received levels ≤160 dB are probably overestimates of the actual numbers that will be significantly affected. This action would therefore have no more than a negligible impact on the affected species or stocks of pinnipeds.

Mitigation

For the proposed Blanco Fracture seismic survey, L-DEO will deploy a 10- or 12–airgun array as an energy source, with discharge volumes of 3050 in3 and 3705 in3, respectively. The airguns in the arrays will be spread out horizontally so the energy from the array will be directed mostly downward. The directional nature of the arrays to be used in this project is an important mitigating factor. This directionality will result in reduced sound levels at any given horizontal distance as compared with the levels expected at that distance if the source were omnidirectional with the stated nominal source level. Because the actual seismic source is a distributed sound source (10–12 airguns) rather than a single point source, the highest sound levels measurable at any location in the water will be less than the nominal source level. Also, the size of the airgun arrays (which are smaller than the 20–gun array used for some other surveys) is another important mitigation measure that will reduce the potential for effects relative to those that might occur with a larger array of airguns. This is in conformance with NMFS' encouraging seismic operators to use the lowest intensity airguns practical to accomplish research objectives. Also, that this project is proposed to occur in deep water is also important as sound levels tend to be lower in deep than in shallow waters at various distances from the airguns.

Proposed Safety Radii

Received sound levels have been modeled by L-DEO in relation to distance and direction from the two arrays. The radii around the 10–airgun array where the received levels would be 180 dB and 190 dB re 1 μPa (rms) were estimated as 550 m (1805 ft) and 200 m (656 ft), respectively. For the 12–airgun array, the radii around the array where the received levels would be 180 dB and 190 dB re 1 μPa (rms) were estimated as 600 m (1969 ft) and 200 m (656 ft), respectively. The 180 and 190 dB shutdown criteria, applicable to cetaceans and pinnipeds, respectively, are specified by NMFS (2000) and, as mentioned previously in this document, are considered conservative for protecting marine mammals from potential injury.

Empirical data concerning these safety radii have been acquired based on measurements during the acoustic verification study conducted by L-DEO in the northern Gulf of Mexico from 27 May to 3 June 2003 (see 68 FR 32460, May 30, 2003). L-DEO's analysis of the acoustic data from that study (Tolstoy *et al.* 2004) provides limited measurements in deep water, the situation relevant here. Those data indicate that, for deep water, the model tends to overestimate the received sound levels at a given distance. Until additional data become available, it is proposed that safety radii during airgun operations in deep water, including the planned operations off Oregon, will be the values predicted by L-DEO's model. Previously, more conservative (larger) safety radii that are 1.5 times the modeled radii have been used for these surveys. However, given that these modeled radii are already conservative (*i.e.*, overestimates) for deep water situations, even without the X 1.5 factor, these larger radii are not being proposed to be used during this seismic survey.

Additional Mitigation Measures

The following mitigation measures, as well as marine mammal visual monitoring (discussed later in this document), are proposed for the subject seismic surveys, provided that they do not compromise operational safety requirements: (1) Speed and course alteration; (2) power-down and shut-down procedures; (3) ramp-up procedures and (4) use of passive acoustics to detect vocalizing marine mammals. In addition, special mitigation measures will be implemented for the North Pacific right whale.

Speed and Course Alteration

If a marine mammal is detected outside the appropriate safety radius and, based on its position and the relative motion, is likely to enter the safety radius, the vessel's speed and/or direct course will be changed if this is practical while minimizing the effects on planned science objectives. Given the presence of the streamer and airgun array behind the vessel, the turning rate of the vessel with trailing streamer and array is no more than five degrees per minute, limiting the maneuverability of the vessel during operations. The marine mammal activities and movements relative to the seismic vessel will be closely monitored to ensure that the marine mammal does not approach within the safety radius. If the mammal appears likely to enter the safety radius, further mitigative actions will be taken, (i.e., either further course alterations or shutdown of the airguns).

Power-down and Shut-down Procedures

A power down involves decreasing the number of airguns in use such that the radius of the 180–dB (or 190–dB) zone is decreased to the extent that

marine mammals are not in the safety zone. A power down may also occur when the vessel is moving from one seismic line to another, unless the full airgun array is scheduled to be operated during line changes. During a power down, one 80 in3 airgun will continue to be operated. The continued operation of one airgun is intended to alert marine mammals to the presence of the seismic vessel in the area. In contrast, a shut down occurs when all airgun activity is suspended.

If a marine mammal is detected outside the safety radius but is likely to enter the safety radius, and if the vessels speed and/or course cannot be changed to avoid having the mammal enter the safety radius, the airguns will be powered down before the mammal is within the safety radius. Likewise, if a mammal is already within the safety zone when first detected, the airguns will be powered down immediately. During a power down, at least one airgun (e.g., 80 in^3) will be operated. If a marine mammal is detected within or near the smaller safety radius around that single airgun (Table 1), all airguns will be shut down.

Following a power down, airgun activity will not resume until the marine mammal has cleared the safety zone. The animal will be considered to have cleared the safety zone if it (1) is visually observed to have left the safety zone, or (2) has not been seen within the zone for 15 min in the case of small odontocetes and pinnipeds, or (3) has not been seen within the zone for 30 min in the case of mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, and beaked whales.

During a power down, the operating airgun will be shut down if a marine mammal approaches within the modeled safety radius for the then-operating source, typically a single gun of 80 in3. Because no calibration measurements have been done to confirm the modeled safety radii for the single gun, conservative radii may be used (1.5 times the modeled safety radius). For an 80 in3 airgun, the predicted 180–dB distance applicable to cetaceans is 36 m (118 ft) and the x1.5 conservative radius is 54 m (177 ft). The corresponding 190–dB radius applicable to pinnipeds is 13 m (43 ft), with the x1.5 conservative radius being 20 m (66 ft). If a marine mammal is detected within or about to enter the appropriate safety radius around the small source in use during a power down, airgun operations will be entirely shut down. In addition, the airguns will be shut down if a North Pacific right whale is sighted anywhere near the vessel, even if it is located outside the safety radius, because of the rarity and sensitive status of this species. Resumption of airgun activity will follow procedures described for power-down operations.

Ramp-up Procedure

When airgun operations commence after a certain period without airgun operations, the number of guns firing will be increased gradually, or "ramped up" (also described as a "soft start"). Operations will begin with the smallest gun in the array (80 in3). Guns will be added in sequence such that the source level of the array will increase in steps not exceeding 6 dB per 5–min period over a total duration of approximately 18–20 minutes. Throughout the ramp-up procedure, the safety zone for the full 10- or 12–gun array will be maintained.

The "ramp-up" procedure will be required under the following circumstances. Under normal operational conditions (vessel speed 4 knots (7.4 km/hr)), a ramp-up would be required after a power-down or shut-down period lasting more than 4 minutes if the Ewing was towing the 10- or 12–gun array. At 4 knots, the Ewing would travel 600 m (1969 ft) during a 5–minute period. The 600–m (1969 ft) distance is the calculated 180–dB safety radius.

If the towing speed is reduced to 3 knots (5.6 km/hr) or less, as sometimes required when maneuvering in shallow water (not a factor here), it is proposed that a ramp-up would be required after a "no shooting" period lasting greater than 7 minutes. At towing speeds not exceeding 3 knots (5.6 km/hr), the source vessel would travel no more than 600 m (1969 ft) in about 7 minutes. Based on the same calculation, a ramp-up procedure would be required after a 4–minute period if the speed of the source vessel was 5 knots (9.3 km/hr).

Ramp-up will not occur if the safety radius has not been visible for at least 30 minutes prior to the start of ramp-up operations in either daylight or nighttime. If the safety radius has not been visible for that 30–minute period (e.g., during darkness or fog), ramp-up will not commence unless at least one airgun has been firing continuously during the interruption of seismic activity. That airgun will have a source level of at least 180 dB re 1 microPa m (rms). It is likely that the airgun arrays will not be ramped up from a complete shut down at night or in thick fog, because the outer part of the safety zone for those arrays will not be visible during those conditions. If one airgun has operated during a power down period, ramp up to full power will be permissible at night or in poor visibility, on the assumption that marine mammals will be alerted to the approaching seismic vessel by the sounds from the single airgun and could move away if they choose. Ramp up of the airguns will not be initiated if a marine mammal is sighted within or near the applicable safety radii during the day or close to the vessel at night.

Comments on past proposed IHAs raised the issue of prohibiting night-time operations as mitigation. However, this is not practicable due to cost considerations. The daily cost to the Federal Government to operate vessels such as *Ewing* is approximately $33,000 to $35,000/day (Ljunngren, pers. comm. May 28, 2003). If the vessels were prohibited from operating during nighttime, it is possible that each trip would require an additional three to five days, or up to $175,000 more, depending on average daylight at the time of work.

Taking into consideration the additional costs of prohibiting night-time operations and the likely impact of the activity (including all mitigation and monitoring), NMFS has preliminarily determined that the proposed mitigation and monitoring ensures that the activity will have the least practicable impact on the affected species or stocks. Marine mammals will have sufficient notice of a vessel approaching with operating seismic airguns (at least 1 hour in advance), thereby giving them an opportunity to avoid the approaching array; if ramp-up is required after an extended power-down, two marine mammal observers will be required to monitor the safety radii using night vision devices for 30 minutes before ramp-up begins and verify that no marine mammals are in or approaching the safety radii; ramp-up may not begin unless the entire safety radii are visible; and ramp-up may occur at night only if one airgun with a sound pressure level of at least 180 dB has been maintained during interruption of seismic activity. Therefore it is likely that the 10–12–airgun array will not be ramped-up from a shut-down at night.

Marine Mammal Monitoring

L-DEO must have at least three visual observers and two passive acoustic system biological monitors on board the vessels, and at least two must be an experienced marine mammal observer that NMFS approves. These observers will be on duty in shifts of no longer than 4 hours.

The visual observers will monitor marine mammals and sea turtles near the seismic source vessel during all daytime airgun operations, during any

nighttime start-ups of the airguns and at night, whenever daytime monitoring resulted in one or more power-down situations due to marine mammal presence. During daylight, vessel-based observers will watch for marine mammals and sea turtles near the seismic vessel during periods with shooting (including ramp-ups), and for 30 minutes prior to the planned start of airgun operations after an extended power-down or shut-down.

Use of multiple observers will increase the likelihood that marine mammals near the source vessel are detected. L-DEO bridge personnel will also assist in detecting marine mammals and implementing mitigation requirements whenever possible (they will be given instruction on how to do so), especially during ongoing operations at night when the designated observers are on stand-by and not required to be on watch at all times.

The observer(s) will watch for marine mammals from the highest practical vantage point on the vessel, which is either the bridge or the flying bridge. On the bridge of the *Maurice Ewing*, the observer's eye level will be 11 m (36 ft) above sea level, allowing for good visibility within a 210 arc. If observers are stationed on the flying bridge, the eye level will be 14.4 m (47.2 ft) above sea level. The observer(s) will systematically scan the area around the vessel with Big Eyes binoculars, reticle binoculars (e.g., 7 X 50 Fujinon) and with the naked eye during the daytime. Laser range-finding binoculars (Leica L.F. 1200 laser rangefinder or equivalent) will be available to assist with distance estimation. The observers will be used to determine when a marine mammal or sea turtle is in or near the safety radii so that the required mitigation measures, such as course alteration and power-down or shut-down, can be implemented. If the airguns are powered or shut down, observers will maintain watch to determine when the animal is outside the safety radius.

Observers will not be on duty during ongoing seismic operations at night; bridge personnel will watch for marine mammals during this time and will call for the airguns to be powered-down if marine mammals are observed in or about to enter the safety radii. However, an observer must be on standby at night and available to assist the bridge watch if marine mammals are detected. If the airguns are ramped-up at night from a power-down situation, two marine mammal observers will monitor for marine mammals for 30 minutes prior to ramp-up and during the ramp-up using night vision equipment that will be available (ITT F500 Series Generation 3 binocular image intensifier or equivalent). All observer activity will be assisted by the passive acoustic monitoring (PAM) system where its use is feasible.

Passive (Acoustic) Monitoring

L-DEO will use the PAM system whenever the vessel is operating in waters deep enough for the PAM hydrophone array to be towed. Passive acoustic equipment was first used on the *Ewing* during the 2003 Sperm Whale Seismic Study conducted in the Gulf of Mexico and subsequently was evaluated by L-DEO to determine whether it was practical to incorporate it into future seismic research cruises. The SEAMAP system has been used successfully in L-DEO's SE Caribbean study (69 FR 24571, May 4, 2004). The SEAMAP PAM system has four hydrophones, which allow the SEAMAP system to derive the bearing toward the a vocalizing marine mammal. In order to operate the SEAMAP system, the marine mammal monitoring contingent onboard the *Ewing* will be increased by 2 to 3 additional biologists who will monitor the SEAMAP system. Verification of acoustic contacts will then be attempted through visual observation by the marine mammal observers. However, the PAM system by itself usually does not determine the distance that the vocalizing mammal might be from the seismic vessel. It can be used as a cue by the visual observers as to the presence of an animal and to its approximate bearing (with some ambiguity). At this time, however, it is doubtful if PAM can be used as a trigger to initiate power-down of the array. Perhaps with continued studies the relationship between a signal on a passive acoustic array and distance from the array can be determined with sufficient accuracy to be used for this purpose without complementary visual observations.

Reporting

L-DEO will submit a report to NMFS within 90 days after the end of the cruise, which is currently predicted to occur during August, 2004. The report will describe the operations that were conducted and the marine mammals that were detected. The report must provide full documentation of methods, results, and interpretation pertaining to all monitoring tasks. The report will summarize the dates and locations of seismic operations, marine mammal sightings (dates, times, locations, activities, associated seismic survey activities), and estimates of the amount and nature of potential take of marine mammals by harassment or in other ways.

ESA

Under section 7 of the ESA, the National Science Foundation (NSF), the agency funding L-DEO, has begun consultation on the proposed seismic survey. NMFS will also consult on the issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded prior to a determination on the issuance of an IHA.

National Environmental Policy Act (NEPA)

The NSF has prepared an EA for the Blanco Fracture Zone oceanographic seismic surveys. NMFS is reviewing this EA and will either adopt it or prepare its own NEPA document before making a determination on the issuance of an IHA. A copy of the NSF EA for this activity is available upon request (see **ADDRESSES**).

Preliminary Conclusions

NMFS has preliminarily determined that the impact of conducting the seismic survey on the Blanco Fracture Zone in the NPO. will result, at worst, in a temporary modification in behavior by certain species of marine mammals. This activity is expected to result in no more than a negligible impact on the affected species or stocks.

For reasons stated previously in this document, this preliminary determination is supported by (1) the likelihood that, given sufficient notice through slow ship speed and ramp-up, marine mammals are expected to move away from a noise source that it finds annoying prior to its becoming potentially injurious; (2) recent research that indicates that TTS is unlikely (at least in delphinids) at until levels closer to 200–205 dB re 1 microPa are reached rather than 180 dB re 1 microPa; (3) the fact that 200–205 dB isopleths would be within 100 m (328 ft) of the vessel; and (4) the likelihood that marine mammal detection ability by trained observers is close to 100 percent during daytime and remains high at night to that distance from the seismic vessel. As a result, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment is very low and will be avoided through the incorporation of the mitigation measures mentioned in this document.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential

harassment takings is estimated to be small. In addition, the proposed seismic program is not expected to interfere with any subsistence hunts, since seismic operations will not take place in subsistence whaling and sealing areas and will not affect marine mammals used for subsistence purposes.

Proposed Authorization

NMFS proposes to issue an IHA to L-DEO for conducting a oceanographic seismic surveys on the Blanco Fracture Zone in the NPO, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of small numbers of marine mammals; would have no more than a negligible impact on the affected marine mammal stocks; and would not have an unmitigable adverse impact on the availability of species or stocks for subsistence uses.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this request (see **ADDRESSES**).

Dated: May 25, 2004.

Laurie K. Allen,

Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.031204E]

Small Takes of Marine Mammals Incidental to Specified Activities; Oceanographic Surveys in the Southern Gulf of California

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of an incidental take authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to take marine mammals by harassment incidental to conducting oceanographic surveys in the southern Gulf of California to Scripps Institution of Oceanography (Scripps).

DATES: Effective from May 12, 2004, through May 11, 2005.

ADDRESSES: A copy of the IHA and the application are available by writing to Mr. P. Michael Payne, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. A copy of the application containing a list of the references used in this document may be obtained by writing to this address or by telephoning the contact listed here and is also available at: *http://www.nmfs.noaa.gov/prot_res/PR2/Small_Take/smalltake_info.htm#applications.*

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, Office of Protected Resources, NMFS, (301) 713–2322, ext 128.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Under section 3(18)(A), the MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

The term "Level A harassment" means harassment described in subparagraph (A)(i). The term "Level B harassment" means harassment described in subparagraph (A)(ii).

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On December 8, 2003, NMFS received an application from Scripps for the taking, by harassment, of several species of marine mammals incidental to conducting a seismic survey program. As presently scheduled, a seismic survey will be conducted in the Gulf of California. The Gulf of California research cruise will be in an area extending between 22o to 26.5o N and 106o to 111o W. The operations will partly take place in the Exclusive Economic Zone (EEZ) of Mexico.

The purpose of the seismic survey is to improve the understanding of the tectonic history of the Gulf of California, and especially of how the transition from continental rifting to seafloor spreading occurred. This includes understanding the relationship between seafloor structures in the deep water of the Gulf and structures that have been mapped on land (mostly in Baja California Sur) and in shallow coastal waters. The data will be used to test alternative tectonic models of how continental rifting and shearing during the initial separation of the Baja California peninsula from the rest of Mexico determined the present pattern of seismically active faults and volcanically-active spreading centers. The Gulf was selected for this work because it is adjacent to the field areas previously studied and because the seafloor sediment is generally thinner than further north, allowing for better resolution of seabed structure.

Description of the Activity

The seismic survey will involve one vessel, the *R/V Roger Revelle* (under a cooperative agreement with the U.S. Navy, owner of the vessel). The *Roger Revelle* will deploy two airguns as an energy source, plus a single (450 m or 1,476.4 ft) towed streamer of hydrophones to receive the returning acoustic signals, that can be retrieved.

The survey will take place in water depths greater than 400 m (1320 ft).

The procedures to be used for the seismic study will be similar to those used during previous seismic surveys by Scripps in the eastern tropical Pacific Ocean (68 FR 60916, October 24, 2003). The proposed seismic surveys will use conventional seismic methodology, with a pair of low-energy Generator-Injector (GI) airguns as the energy source and a towed hydrophone streamer as the receiver system. The energy to the airgun array is compressed air supplied by compressors on board the source vessel. During the airgun operations, the vessel will travel at 11.1 km/hr (6 knots) and seismic pulses will be emitted at intervals of 6 to 10 sec. The 6- to 10–sec spacing corresponds to a shot interval of about 18.5 to 31 m (161 to 102 ft). The GI gun that will be responsible for introducing the sound pulse into the ocean is 45 in3. A larger (105 in3) injector chamber injects air into the previously-generated GI airgun bubble to maintain its shape, and does not introduce more sound into the water. The two guns will be towed 8 m (26.2 ft) apart side by side, 21 m (68.9 ft) behind the *Roger Revelle*, at a depth of 2 m (6.6 ft).

For the 2 GI airguns, the sound pressure field has been modeled in relation to distance and direction from the airguns, and in relation to depth. The predicted radii from the source vessel are 54 m (177 ft) for 180 dB and 17 m (56 ft) for 190 dB.

In addition to the operation of the airgun array, a multi-beam sonar, 3.5 kHz sub-bottom profiler and passive geophysical sensors (gravimeter and magnetometer) will be operated during the seismic profiling, and continuously throughout the seismic survey cruise.

Additional information on the work proposed is contained in the proposed authorization notice (69 FR 12832, March 18, 2004), and in the application and in the Final Environmental Assessment (EA) for oceanographic surveys in the Gulf of California (Scripps, 2003), which are available (see **ADDRESSES**).

Comments and Responses

A notice of receipt of the Scripps Gulf of California application and proposed IHA was published in the **Federal Register** on March 18, 2004 (69 FR 12832). During the comment period, NMFS received comments from The Center for Biological Diversity (CBD), the Animal Welfare Institute (AWI), the Mexican Society for Marine Mammalogy (SOMEMMA), and from several individuals.

Comment 1: The CBD believes NMFS has not demonstrated that the L-DEO project will take only small numbers of marine mammals.

Response: NMFS believes that the small numbers requirement has been satisfied. The U.S. District Court for the Northern District of California held in *NRDC* v. *Evans* (Civil No. C–02–3805–EDL) that NMFS' regulatory definition of "small numbers" improperly conflates it with the "negligible impact" definition. Even if that is the case, NMFS has made a separate determination that the takes of the affected marine mammal species or stocks will be small. For example, the species or stock most likely to be harassed during the seismic survey is the common dolphin, with a "best estimate" of 1212 animals out of an estimated population size of 3,093,000 (Scripps, 2003). Although this absolute number may arguably not be small, it represents an estimated 0.039 percent of the affected population and is, therefore, relatively small. Marine mammals not are expected to be seriously injured or killed, and no effects on reproduction and/or survival are anticipated.

Comment 2: Noting that the surveys will take place only in waters greater than 400 m (1312 ft) deep, the CBD asserts that the **Federal Register** Notice for the proposed IHA does not adequately analyze the difference the depth of water has on the survey impacts to marine mammals or how the safety radii or other mitigation measures will be implemented in such waters.

Response: For the 2 GI airguns, the sound pressure field has been modeled in relation to distance and direction from the airguns, and in relation to depth. Empirical data concerning the 180-, 170- and 160–dB distances have been acquired based on measurements during the acoustic verification study conducted by Lamont-Doherty Earth Observatory (L-DEO) in the northern Gulf of Mexico from 27 May to 3 June 2003 (Tolstoy et al., 2004). Although the results are limited, the data showed that radii around airguns where the received level would be 180 dB re 1 microPa (rms), the safety criterion applicable to cetaceans (NMFS, 2000), varies with water depth. Similar depth-related variation is likely in the 190–dB distances applicable to pinnipeds. For water depths between 100 m (328 ft) and 1000 m (3281 ft), these empirical measurements indicate that the model used by Scripps is conservative for protecting marine mammals at intermediate and deep water sites. Since the water depths in the area of this project are all greater than 400 m (1312 ft), NMFS believes that the safety zones are appropriate for the size of the airguns and the water depth. These safety zones will be monitored by dedicated marine mammal observers, as discussed later in this document.

In addition, the received levels of low-frequency underwater sounds diminish close to the surface (because of pressure-release and interference phenomena that occur at and near the surface (Urick, 1983; Richardson et al., 1995)). Paired measurements of received airgun sounds at depths of 3 m (9.8 ft) vs 9 m (29.5 ft) or 18 m (59 ft) have shown that received levels are typically several decibels lower at 3 m (9.8 ft) (Greene and Richardson, 1988). This characteristic provides additional protection to marine mammals while at the surface in the vicinity of the acoustic source, further indicating that the safety zones are conservative for protecting marine mammals.

Comment 3: The CBD states that there is no mention of the compounded impact of the 20–airgun array's seismic output along with the two other acoustical data acquisition systems, the sonar and sub-bottom profiler. CBD and the AWI state that despite the fact that all of these sources will be operating, the **Federal Register** Notice provides no estimate of take from the sonar and profiler individually or from all three sources collectively and instead, it assumes that any marine mammals close enough to be affected by the multibeam sonar would already be affected by the airguns. Therefore, no additional allowance is included for animals that might be affected by the multibeam sonar. CBD believes that this explanation does not account for times when all three sources may not be operating simultaneously or provide any discussion of the enhanced impact of multiple acoustic sources when operating together.

Response: As NMFS indicated in the **Federal Register** notice of the proposed IHA, as well as in other **Federal Register** notices regarding seismic surveys, the multibeam sonar has an anticipated radius of influence significantly less than that for the airgun array. NMFS further stated that marine mammals close enough to be affected by the multibeam sonar would already be affected by the airguns. Therefore, no additional allowance is included for animals that might be affected by the sonar. There is no enhanced impact of using the multibeam when operating it together with the airgun array. The sub-bottom profiler would not enhance impacts, since the radii of influence are smaller for the profiler than those of the airgun array.

It is true that there are no estimates of take for times when the multibeam sonar and/or sub-bottom profiler are operated without airguns. This is because the 160–dB and 180–dB isopleths of the sub-bottom profiler and multibeam are either small or the beams are very narrow, making the duration of the exposure and the potential for taking very small. As provided in the Scripps application, the 160–dB and 180–dB radii in the horizontal direction for the sub-bottom profiler are estimated to be near 20 m (66 ft) and 8 m (26 ft), respectively. In the vertical direction, the 160–dB and 180–dB radii are 180 m (591 ft) and 18 m (59 ft) directly below the hull-mounted transducer. The multibeam sonar has a beam width of 1 degree, fore-and-aft and images the seafloor over a 120 to 140 degree-wide swath (approximately 1.4 to 2.2 km (2.2 to 3.5 mi) in 1000 m (3281 ft) in depth). It uses very short (15 millisecond) transmit pulses with a 10- to 20–second repetition rate and a 11.25 to 12.60 kHz frequency sweep. The maximum source level is 240 dB rms when the instrument is operating in water depths greater than 10,000 m (32808 ft). However, the actual level is reduced by the instrument based on detecting water depth, and in the relatively shallow Gulf of California, it will always be much lower than at maximum level.

Because NMFS treats harassment or injury from pulsed sound as a function of total energy received, the actual harassment or injury threshold for multibeam sonar signals would be at a much higher dB level than that for longer duration pulses such as seismic or military sonar signals. As a result, NMFS believes that marine mammals are unlikely to be harassed or injured from the multibeam sonar or the sub-bottom profiler.

NMFS believes that other than to voluntarily ride the bow wave of the vessel (an indication that the animal is not annoyed), it is unlikely that a marine mammal would approach a moving vessel that close. If one did, the duration of exposure and of behavioral responses to these downward-directed sources would be very brief, and, NMFS believes, this brief behavioral response would not rise to the level of take.

Comment 4: The CBD states that NMFS' analysis of mitigation measures to ensure least practicable impact is flawed because it lacks an analysis for a larger safety radius. CBD states that larger safety radii have been used in past seismic surveys on the R/V Maurice Ewing and argues that these larger safety radii should be applied to this seismic survey.

Response: See response to comment 2. Scripps will use a pair of low-energy GI airguns for this survey. These airguns have a capacity of 45–cubic inches each. As a safety radius established at 180 dB re 1 microPa (rms) is already conservative for preventing Level A harassment (injury), imposing a much larger safety radius based on the sound intensity from airgun arrays 3050 in3 (20 airguns) is not warranted.

Comment 5: CBD suggests that Scripps incorporates the use of a passive acoustic monitoring (PAM) system as a mitigation measure.

Response: A requirement to use the PAM system is not warranted onboard the *R/V Roger Revelle* because the 180–dB safety radii (and shutdown areas) are simply too small to use it effectively. L-DEO is utilizing and continues to evaluate one of the few production models configured for current seismic operations and models for the same vessel on the *R/V Maurice Ewing*. L-DEO will report the effectiveness of the PAM system and NMFS will then determine if the PAM system can be applied to other seismic surveys.

Comment 6: CBD states that NMFS should require dedicated night observers rather than using bridge personnel to watch for marine mammals during night-time operations.

Response: It should be noted that dedicated marine mammal observers are not required to be on the bridge at all times during the night, but at least one observer must be available on-call during night-time hours. However, unless the safety zone is lighted, trained marine mammal observers using night vision devices (NVDs) must be on watch during periods prior to and during ramp-up from a power-down situation at night. They will also be on watch at other periods during the night, particularly if marine mammals are sighted in the seismic area during the day.

At other times during the night, extra (non-NMFS-approved) observers will be available. The safety radius is small enough to be adequately lighted and monitored at night.

Comment 7: CBD and SOMEMMA both suggest that Scripps incorporate aerial surveys as a monitoring measure to improve the likeliness of finding a stranded animal.

Response: NMFS agrees that aerial surveys may be useful in detecting marine mammals near the safety radii and detecting adverse reactions to the seismic surveys and increasing the likelihood that such adverse reactions could be avoided. However, NMFS believes that the work proposed by Scripps will affect only a very small area of the ocean (510 m (1673 ft)) and the area that might result in marine mammals being exposed to noise levels that might result in injury or mortality would be even smaller (54 m (177 ft)). As a result, requiring aerial surveys of Mexican beaches and offshore waters to look for stranded marine mammals is not warranted for this activity. Moreover, aerial surveys are not practicable because the ships will not be close to shore and because it is difficult to get a flight clearance in a foreign country. NMFS believes that the safety zone can be adequately monitored due to the number of marine mammal observers and because the safety radius is relatively small.

Comment 8: The CBD states that NMFS must initiate a section 7 consultation under the Endangered Species Act (ESA) and expresses particular concern with the project's potential impacts on sea turtles.

Response: NMFS has completed consultation under section 7 of the ESA. NMFS issued a biological opinion regarding the effects of this action on ESA-listed species and critical habitat. That biological opinion concluded that this action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. In addition, NMFS is requiring that all mitigation and monitoring measures for marine mammals be applied to sea turtles.

Comment 9: The CBD believes that in order for NMFS to comply with the National Environmental Policy Act (NEPA), it must demonstrate that it has fully analyzed the impacts of, alternatives to, and mitigation measures for the project prior to issuing an IHA for the L-DEO project. NMFS must assess the cumulative impacts of the project in conjunction with other actions on the environment.

Response: NMFS closely follows NEPA regulations and NOAA Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999) before making a determination on whether it will adopt another Federal agency's NEPA document, or prepare its own. Critical to this determination is the quality of another agency's NEPA document, whether it fully addresses the action proposed by NMFS, and whether NMFS' proposed action is significant as defined in 40 CFR 1508.27 and NAO 216–6, section 6.01. As noted in the proposed authorization notice (68 FR 60086, October 21, 2003), an EA was prepared by the National Science Foundation (NSF) and released to the

public by NMFS. That EA contained a complete description of the proposed action and identified alternatives to that action; a description of the affected environment; an assessment of impacts, including unavoidable impacts, indirect impacts and cumulative impacts; and the measures proposed to reduce impacts to the lowest level practicable. In accordance with NAO 216–6, NMFS has reviewed the information contained in NSF's EA and determined that it accurately and completely describes the proposed action alternative, reasonable additional alternatives, and the potential impacts on marine mammals, endangered species, and other marine life that could be impacted by the preferred alternative and the other alternatives. Additional mitigation measures have been identified and are reflected in the final IHA and the NMFS Finding of No Significant Impact (FONSI). Therefore, preparation of an environmental impact statement on this action is not required. A copy of the NSF EA and FONSI are available upon request (see ADDRESSES).

Comment 10: The AWI objects to the issuance of the Scripps IHA because the research on plate tectonics is not worth the impact on the creatures that live in the ocean.

Response: The MMPA allows for the taking (by harassment, injury and mortality) of marine mammals by otherwise lawful activities provided that the total taking by the activity will not have more than a negligible impact on affected marine mammal stocks, and will not have an unmitigable adverse impact on the availability of those marine mammal stocks for subsistence uses. For the proposed activity, the requisite findings have been made, as explained in this document.

Comment 11: SOMEMMA believes that with current knowledge it is impossible to determine the nature and extent of the damage on individual animals and the number of animals that might be affected by seismic sources. It is possible that the seismic survey could have other unknown effects on marine mammals, such as delayed mortality as a consequence of damage to the hearing system or the number of pregnancies that could be terminated, therefore reducing the year's births. For these reasons, SOMEMMA believes that the surveys should be conducted acknowledging that they may cause some undetermined damage to marine mammal individuals and possibly some populations.

Response: Although marine mammals have only relatively recently been exposed to anthropogenic noise sources, roughly 90 percent of which is from commercial shipping, long-term empirical research on this aspect of taking has not been conducted to date. It should be noted that marine mammals evolved and continue to exist in a noisy environment. However, even in areas with high anthropogenic noise levels, such as southern California and the Mississippi Delta, many marine mammal populations appear healthy and, where assessments have been conducted over time, appear to be increasing in size. As a result, NMFS believes that the short-term activity proposed here, which includes mitigation measures to prevent injury to marine mammals, when combined with general behavior of marine mammals to avoid areas with annoying levels of sound, will result in small numbers of marine mammals being harassed (Level B harassment) and will have a negligible impact on affected marine mammal species.

Comment 12: SOMEMMA states that the extent of damage, the number of individuals that could be affected, and the impact on specific stocks could be severely biased because some of the estimates of stock size do not include the Gulf of California, which could include distinct independent stocks. There is an underestimation of the species that could be affected, in particular those that are very sensitive, the northern right whale and the Guadalupe fur seal.

Response: NMFS believes that its determination on the level of impact on marine mammals, whether listed under the ESA or not, is based on the best scientific information available. That information was provided in the Scripps' application and NSF's EA and also in other documents referenced in the proposed authorization **Federal Register** notice. No additional information regarding marine mammal abundance or stock structure for Gulf of California populations was provided during the public review period and no significant new information has been found since that **Federal Register** publication. However, whenever information is lacking to define a particular population or stock of marine mammals then NMFS assesses impacts with respect to the species as a whole (54 FR 40338, September 29, 1989). As indicated in the L-DEO application, NSF EA and this document, that is what was done here.

Comment 13: SOMEMMA recommends that in the event of mortalities that could potentially be attributed to the survey, a plan must be established to recover carcasses and to transport them to appropriate facilities where experts can determine the cause of death and any other damage attributable to the survey and that knowledge obtained from the necropsies should be shared between the United States and Mexican authorities and scientific communities.

Response: NMFS believes that the work proposed by Scripps will affect only a very small area of the ocean (510 m (1673 ft)) and the area that might result in marine mammals being exposed to noise levels that might result in injury or mortality would be even smaller (54 m (177 ft)). As a result, requiring necropsies to be conducted on all strandings along the Gulf of California coast is not warranted for this activity.

Comment 14: An individual states that in order to mitigate the impact of airgun operations, onboard marine mammal observers should work with land-based observers and monitoring networks.

Response: See response to comment 13. It is extremely unlikely that any marine mammals would be injured, killed, or startled to such a level that strandings would occur as a result of the sound levels from the 2 GI-guns. The airguns being used in this survey are low-intensity and small-capacity airguns and should not be compared with much larger airguns used by the offshore oil and gas industry or by other scientific activities.

Comment 15: An individual recommends that observers be contracted out by an independent contractor rather than hired by Scripps and that all data collection and reporting should be independent from Scripps.

Response: NMFS has not found a problem with an IHA holder either directly hiring approved biological observers for a specific cruise or contracting with an independent firm that specializes in providing observers for shipboard monitoring. NMFS has supplied Scripps with a list of NMFS-approved marine mammal observers who are independent contractors. Scripps has also hired students from the University of California, San Diego, as well as citizens from Mexico to work as marine mammal observers. NMFS requires holders of IHAs to submit a report within 90 days of completion of the survey cruise that describes the operations that were conducted and the marine mammals that were detected. The report must provide full documentation of methods, results, and interpretation pertaining to all monitoring tasks, and summarize the dates and locations of seismic operations, marine mammal sightings (dates, times, locations, activities,

associated seismic survey activities), and estimates of the amount and nature of potential take of marine mammals by harassment or in other ways, all of which is recorded by the marine mammal observers. This information should be provided to Scripps by the marine mammal observers so that Scripps may submit a formal report within the 90 days.

Comment 16: NMFS should require only NMFS-approved marine mammal observers.

Response: NMFS normally requires IHA holders to hire at least one NMFS-approved marine mammal observer whenever operating under an IHA. This observer may in turn train others to implement the required monitoring program. IHA applicants must contact the regional NMFS office to obtain a list of NMFS-approved observers. Scripps has fulfilled this requirement by hiring four NMFS-approved marine mammal observers.

Comment 17: Reporting requirements should be fulfilled by the observer team rather than by Scripps, ensuring that NMFS receives all data recorded by the observers.

Response: Since Scripps is the holder of the IHA, Scripps, rather than the observers, is required to submit a 90–day report. As an entity responsible for completion of the 90–day report, it is the holder's decision whether to contract out the report writing. This 90–day report must describe all operations that were conducted and the marine mammals that were detected.

Comment 18: NMFS should not allow night-time operations due to the sub-standard monitoring conditions.

Response: While NMFS agrees that the effectiveness of night-time visual monitoring is limited, it believes that the safety zones are small enough to be adequately monitored at night. In addition, as mentioned in previous authorization notices, Scripps believes that night-time operations are necessary due to cost considerations. The daily cost to the Federal Government to operate vessels such as Roger Revelle is approximately $33,000 to $35,000/day (Ljunngren, pers. comm. May 28, 2003). If the vessel was prohibited from operating during night-time, it is possible that each trip would require an additional 3 to 5 days to complete the work, or up to $175,000 more per vessel per cruise, depending on average daylight at the time of work.

If a seismic survey vessel is limited to daylight seismic operations (12–13 hours during April/May at this location), efficiency would be much reduced. Without commenting specifically on how that would affect the present project, for seismic operators in general, a daylight-only requirement would be expected to result in one or more of the following outcomes: cancellation of potentially valuable seismic surveys; reduction in the total number of seismic cruises annually due to longer cruise durations; a need for additional vessels to conduct the seismic operations; or work conducted by non-U.S. operators or non-U.S. vessels when in waters not subject to U.S. law. Because of the need to keep a vessel at-speed in order to successfully tow the hydrophone streamers, the vessel would need to be underway throughout the night whether or not the airguns are fired at night. Additional down-time can be anticipated each day as the vessel maneuvers all night to come back to the shut-down location 30 minutes after daylight. This is unlikely to be successful very often and will likely result in additional time needed for surveys to be completed.

For this survey, trained marine mammal observers using night vision devices (NVDs) will be on watch during periods prior to and during ramp-up from a power-down situation at night. They will also be on watch at other periods during the night, particularly if marine mammals are sighted in the seismic area during the day.

At other times during the night, extra [non-NMFS-approved] observers will be available. Also, the safety radius is small enough to be adequately lighted and monitored at night, if Scripps chooses to do so. Finally, for reasons mentioned elsewhere in this document, marine mammals are unlikely to be seriously injured or killed by the noise from approaching GI airguns. Thus, limiting seismic shooting except during daylight hours is unnecessary and unlikely to result in less level B harassment to marine mammals than would conducting 24–hour survey operations.

Recently, L-DEO completed two tests of the effectiveness of using NVDs (Smultea and Holst, 2003, Appendix C; Holst 2004, Appendix B). Results of those tests indicated that the Night Quest NQ220 NVD is effective at least to 150 to 200 m (492 to 656 ft) away under certain conditions. As the predicted radii from the source vessel are 54 m (177 ft) for 180 dB, that is sufficiently within the range of the NVDs to allow some chance of detecting marine mammals visually within the area of potential TTS during ramp-up.

In reviewing L-DEO's report for the Hess Deep (Smultea and Holst, 2003), it is apparent that few marine mammals would have been exposed to sound levels ≥ 180–dB (rms) even if there had been no visual observations or power-downs. In the Hess Deep study for example, only a single whale (probably a beaked whale) was sighted near the outer perimeter of the safety zone. As a result, NMFS believes that a substantial proportion of the marine mammals that might be within that distance would be expected to move away either during ramp-up or, if the airguns were already operating, as the vessel approaches.

As noted in recent **Federal Register** notices, taking into consideration the additional costs of prohibiting night-time operations, the additional observers at night, and the likely low impact of the activity (given the required mitigation and monitoring), NMFS has determined that the IHA's requirements will ensure that the activity will have the least practicable impact on the affected species or stocks for the following reasons. (1) Marine mammals will have sufficient notice of a vessel approaching with operating seismic airguns, thereby giving them an opportunity to avoid the approaching array. (2) If ramp-up is required after a power-down, at least two marine mammal observers will be required to monitor the safety radius using NVDs, when necessary to improve vision, for 30 minutes before ramp-up begins and verify that no marine mammals are in or approaching the safety radius. (3) Ramp-up may not begin unless the entire 180–dB safety radius is visible (i.e., no ramp-up can begin in heavy fog or high sea states) and ramp-up may occur at night only if one airgun with a sound pressure level of at least 160 dB has been maintained during interruption of seismic activity. Therefore, the 2–gun array will not be ramped-up from a shut-down at night.

Comment 19: NMFS must verify the 54–m (177–ft) safety zone used for the shut-down procedures and should require outside expertise in the establishment of what is a safe distance for marine mammals and sea turtles.

Response: The safety radii have been calculated based on depth-specific data for the 2 GI-gun proposed to be used during this research cruise. Scripps contracted LGL Ltd., environmental research associates, to model and calculate the 160-, 170-, 180- and 190–dB isopleths (lines of equal pressure). NMFS has reviewed the proposed mitigation measures and believes that the mitigation measures that will be undertaken by Scripps ensure the least practicable impacts on potentially affected marine mammals.

Comment 20: An individual states that NMFS should establish a protocol for assessing behavioral responses to the operational procedures.

Response: NMFS is currently working to develop noise exposure criteria, which will further define behavioral responses to noise.

Comment 21: An individual states that NMFS should develop mitigation for the use of the multi-beam sonar and the sub-bottom profiler.

Response: Please see the response to comment 3.

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the Gulf of California near the and its associated marine mammals can be found in the Scripps application and a number of documents referenced in the Scripps application, and is not repeated here. In the Gulf of California area, 31 marine mammal species are known to occur. The cetacean species are the sperm whale (*Physeter macrocephalus*), pygmy sperm whale (*Kogia breviceps*), dwarf sperm whale (*Kogia sima*), Baird's beaked whale (*Berardius bairdii*), Cuvier's beaked whale (*Ziphius cavirostris*), Pygmy beaked whale (*Mesoplodon peruvianus*), Perrin's beaked whale (*Mesoplodon perrini*), Ginkgo-toothed beaked whale (*Mesoplodon ginkgodens*), rough-toothed dolphin (*Steno bredanensis*), bottlenose dolphin (*Tursiops truncatus*), pantropical spotted dolphin (*Stenella attenuata*), spinner dolphin (*Stenella longirostris*), striped dolphin (*Stenella coeruleoalba*), short-beaked common dolphin (*Delphinus delphis*), long-beaked common dolphin (*Delphinus capensis*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), Risso's dolphin (*Grampus griseus*), melon-headed whale (*Peponocephala electra*), pygmy killer whale (*Feresa attenuata*), false killer whale (*Pseudorca crassidens*), killer whale (*Orcinus orca*), short-finned pilot whale (*Globicephala macrorhynchus*), gray whale (*Eschrichtius robustus*), humpback whale (*Megaptera novaeangliae*), minke whale (*Balaenoptera acutorostrata*), Bryde's whale (*Balaenoptera edeni*), fin whale (*Balaenoptera physalus*), and blue whale (*Balaenoptera musculus*). Also, three species of pinnipeds, the California sea lion (*Zalophus californianus*), Guadalupe fur seal (*Arctocephalus townsendi*), and northern elephant seal (*Mirounga angustirostris*) could potentially be encountered during the proposed seismic surveys. Five of these species are listed as endangered under the ESA: sperm, humpback, fin, blue whales, and Guadalupe fur seals. Additional information on most of these species is available at: *http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html.*

Potential Effects on Marine Mammals

NMFS' August 26, 2003, **Federal Register** notice for a Scripps survey (68 FR 51240) describes the anticipated effects of the *Roger Revelle*'s airguns, multibeam sonar, and the sub-bottom profiler on marine mammals, including masking, behavioral disturbance, and potential hearing impairment and other physical effects. A discussion on potential impacts on marine mammals was provided in the **Federal Register** notice at 69 FR 12832 (March 18, 2004) and in the Scripps application, and is not repeated here.

Mitigation

The following mitigation measures are required for the subject seismic surveys, provided that they do not compromise operational safety requirements: (1) Speed and course alteration; (2) ramp-up and shut-down procedures; (3) no start up at night; (4) avoidance of any state or national parks by at least 10 km (6.2 mi); (5) avoidance of sea lion rookeries by at least 10 km (6.2 mi); and (6) operation of airguns only in water greater than 400 m (1312 ft) deep. Mitigation also includes marine mammal monitoring in the vicinity of the arrays. These measures also apply to sea turtles. These mitigation measures are further described here.

These mitigation measures will incorporate use of established safety radii that are 17 m (56 ft) and 54 m (177 ft) from the arrays, where sound levels ≥190 and 180 dB re 1 μPa rms (the criteria for onset of Level A harassment for pinnipeds and cetaceans respectively) are predicted to be received. The small size of the two GI airguns to be used in this project is also an important mitigating factor. The airguns will each be 45 in^3.

Speed and Course Alteration

If a marine mammal or sea turtle is detected outside the appropriate safety radius and, based on its position and the relative motion, is likely to enter the safety radius, the vessel's speed and/or direct course will be changed in a manner that also minimizes the effect to the planned science objectives. The marine mammal activities and movements relative to the seismic vessel will be closely monitored to ensure that the marine mammal does not approach within the safety radius. If the mammal appears likely to enter the safety radius, further mitigative actions will be taken, i.e., either further course alterations or shutdown of the airguns.

Shut-down Procedures

Airgun operations will be shutdown immediately when cetaceans or pinnipeds are seen within or about to enter the appropriate safety radius. If a marine mammal is detected outside of but is likely to enter the safety radius, and if the vessel's course and/or speed cannot be changed to avoid having the marine mammal enter the safety radius, the airguns will be shutdown before the mammal is within the safety radius. Likewise, if a mammal is already within the safety zone when first detected, the airguns will be shutdown immediately.

The mammal or sea turtle has cleared the safety radius if it is visually observed to have left the safety radius, or if it has not been seen within the zone for 15 minutes (small odontocetes and pinnipeds) or 30 minutes (mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, beaked and bottlenose whales).

Ramp-up Procedure

When airgun operations with the 2–GI airguns first start or commence after a certain period without airgun operations, the number of guns firing will be increased gradually, or "ramped up" (also described as a "soft start"). Guns will be added in sequence such that the source level of the array will increase in steps over a 5–minute period. Throughout the ramp-up procedure, the safety zone will be maintained.

Ramp-up will not occur if the safety radius has not been visible for at least 30 min prior to the start of operations in either daylight or nighttime. If the safety radius has not been visible for that 30 minute period (e.g., during darkness or fog), ramp-up will not commence unless at least one airgun has been firing continuously during the interruption of seismic activity.

Other Mitigation Factors

In order to keep take numbers to the lowest level practicable, the seismic survey vessel will avoid by at least 10 km (6.2 mi) the two protected areas, Loreto Bay National Park and Cabo Pulmo Marine Park, and four California sea lion rookeries that are near the seismic survey area while shooting the GI guns. The GI guns will not be fired in water depths less than 400 m (1312 ft) because noise levels may be higher due to reverberation between the seafloor and the surface. Scripps will also not start-up the GI guns at night and will ramp-up only if one gun has been maintained in operation.

Scripps is confident that they will be able to effectively visually monitor the

180- and 190–dB safety radii at night because it is fairly small in size and, therefore, close to the vessel. Taking into consideration the additional costs associated with prohibiting nighttime operations and the likely impact of the activity (including all mitigation and monitoring), NMFS has determined that the proposed mitigation ensures that the activity will have the least practicable impact on the affected species or stocks. NMFS believes that marine mammals will have sufficient notice of a vessel approaching with operating GI airguns (at least one hour in advance), thereby giving them an opportunity to avoid the approaching array; if ramp-up is required after an extended power-down, two marine mammal observers will be required to monitor the safety radii using night vision devices for 30 minutes before ramp-up begins and verify that no marine mammals are in or approaching the safety radii; ramp-up may not begin unless the entire safety radii are visible; and ramp-up may occur at night only if one airgun with a sound pressure level of at least 180 dB has been maintained during interruption of seismic activity.

Marine Mammal Monitoring

Scripps must have at least four NMFS-approved observers on board the vessel. At least two observers will monitor marine mammals near the seismic source vessel during all daytime airgun operations and during any nighttime ramp-ups of the airguns. During daylight, vessel-based observers will watch for marine mammals near the seismic vessel during periods with shooting (including ramp-ups), and for 30 minutes prior to the planned start of airgun operations after an extended shut-down.

The observers will be on duty in shifts of no longer than 4 hours. Use of two simultaneous observers will increase the likelihood that marine mammals near the source vessel are detected. Scripps bridge personnel and other observers will also assist in detecting marine mammals and implementing mitigation requirements whenever possible (they will be given instruction on how to do so), especially during ongoing operations at night when the designated observers are not on duty.

The observers will watch for marine mammals from the second level on the vessel, which is approximately 10.4 m (34 ft) above the waterline which allows for a 240–degree view. From the bridge of the *Roger Revelle*, the observer's eye level will be approximately 15 m (49 ft). The observer(s) will systematically scan the area around the vessel with reticle binoculars (e.g., 7 X 50 Fujinon) and with the naked eye during the daytime. Laser range-finding binoculars (Leica LRF 1200 laser rangefinder or equivalent) will be available to assist with distance estimation. Big Eye binoculars will also be mounted from the bridge of the *Roger Revelle*. The observers will be used to determine when a marine mammal is in or near the safety radii so that the required mitigation measures, such as course alteration and shut-down, can be implemented. If the airguns are shut down, observers will maintain watch to determine when the animal is outside the appropriate safety radius.

If the airguns are ramped-up at night, two marine mammal observers will monitor for marine mammals for 30 minutes prior to ramp-up and during the ramp-up using night vision equipment that will be available (ITT F500 Series Generation 3 binocular image intensifier or equivalent).

Reporting

Scripps will submit a report to NMFS within 90 days after the end of the cruise. The report will describe the operations that were conducted and the marine mammals that were detected. The report must provide full documentation of methods, results, and interpretation pertaining to all monitoring tasks. The report will summarize the dates and locations of seismic operations, marine mammal sightings (dates, times, locations, activities, associated seismic survey activities), and estimates of the amount and nature of potential take of marine mammals by harassment or in other ways.

Estimates of Take for the Gulf of California

NMFS' current criterion for onset of Level A harassment of cetaceans from impulse sound is 180 re 1 mPa root-mean-squared (rms). The rms pressure is an average over the pulse duration. The rms level of a seismic pulse is typically about 10 dB less than its peak level (Greene, 1997; McCauley et al., 1998, 2000a). The criterion for Level B harassment onset is 160 dB.

Given the proposed mitigation, all anticipated takes are expected to involve a temporary change in behavior that may constitute Level B harassment. The proposed mitigation measures will minimize the possibility of Level A harassment to the lowest level practicable.

Scripps has calculated the "best estimates" for the numbers of animals that could be taken by level B harassment during the proposed seismic survey in the Gulf of California using data on marine mammal abundance from a previous survey region. These estimates are based on a consideration of the number of marine mammals that might be exposed to sound levels equal to or greater than 160 dB, the criterion for the onset of Level B harassment, by operations with the 20–gun array planned to be used for this project. The anticipated radius of influence of the multibeam sonar is less than that for the airgun array, so it is assumed that any marine mammals close enough to be affected by the multibeam sonar would already be affected by the airguns. Therefore, no additional incidental takings are included for animals that might be affected by the multibeam sonar.

The following table explains best estimate of the numbers of each species that would be exposed to seismic sounds greater than or equal to 160 dB.

Species	"Best Estimate" of the Number of Exposures to Sound Levels ≥160 dB	Regional Population Size
Physeteridae		
Sperm whale	6	26053
Dwarf sperm whale	87	11200
Pygmy sperm whale	15	N/A
Ziphiidae		
Cuvier's beaked whale	57	20000
Baird's beaked whale	0	N/A
Pygmy beaked whale	0	N/A
Delphiniade		
Bottlenose dolphin	893	243500
Spinner dolphin	6	1651100

Species	"Best Estimate" of the Number of Exposures to Sound Levels ≥160 dB	Regional Population Size
Spotted dolphin	1022	2059100
Pacific white-sided dolphin	0	931000
Striped dolphin	227	1918000
Common dolphin	1212	3093000
Fraser'e dolphin	0	N/A
Risso's dolphin	902	175800
Melon-headed whale	0	N/A
Pygmy killer whale	0	38900
False killer whale	0	38800
Killer whale	0	8500
Short-finned pilot whale	34	160200
Mysticetes		
Humpback whale	1	1177
Minke whale	0	N/A
Bryde's whale	17	13000
Sei whale	0	N/A
Fin whale	10	1851
Blue whale	0	1400
Pinniped		
Guadalupe fur seal	2	127000
Northern elephant seal	2	13000
California sea lion	50	209000

Conclusions

NMFS has determined that the impact of conducting the seismic survey in the Gulf of California will result, at worst, in a temporary modification in behavior by certain species of marine mammals. This activity is expected to result in no more than a negligible impact on the affected species or stocks.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment is low and will be avoided through the incorporation of the mitigation measures mentioned in this document. In addition, the proposed seismic program is not expected to interfere with any subsistence hunts, since operations in the whaling and sealing areas will be limited or nonexistent.

Conclusions- Effects on Cetaceans

Strong avoidance reactions by several species of mysticetes to seismic vessels have been observed at ranges up to 8 km (4.3 nm) and occasionally as far as 30 km (16.2 nm) from the source vessel. In Arctic waters, some bowhead whales avoided waters within 30 km (16.2 nm) of the seismic operation. However, reactions at such long distances appear to be atypical of other species of mysticetes and, even for bowheads, may only apply during migration. The small size of the two GI airguns used in this project will restrict the exposure to strong noise to much closer distances relative to the source vessel. The predicted radii from the source vessel are 54 m (177 ft) for 180 dB and 17 m (56 ft) for 190 dB.

Odontocete reactions to seismic pulses, or at least those of dolphins, are expected to extend to lesser distances than are those of mysticetes. Odontocete low-frequency hearing is less sensitive than that of mysticetes, and dolphins are often seen in the vicinity of seismic vessels. There are documented instances of dolphins approaching active seismic vessels. However, dolphins as well as some other types of odontocetes will sometimes show avoidance responses and/or other changes in behavior when near operating seismic vessels.

Taking account of the mitigation measures that are planned, effects on cetaceans are generally expected to be limited to avoidance of the area around the seismic operation and short-term changes in behavior, falling within the MMPA definition of Level B harassment.

The numbers of odontocetes that may be harassed by the proposed activities are small relative to the population sizes of the affected stocks. The best estimates for common, spotted, Risso's, and bottlenose dolphins are 1212, 1022, 902, and 893, respectively, which are the most abundant cetaceans in the proposed survey area. These best estimates represent 0.039, 0.050, 0.513, and 0.367 percent of the regional populations for each of these species. For other odontocetes, numbers exposed to greater than 160 dB will be smaller (all of the affected animals represent less than 1 percent of their regional population).

In light of the type of take expected and the relatively small numbers of affected cetaceans, the action is expected to have no more than a negligible impact on the affected species or stocks of marine mammals. In addition, mitigation measures such as controlled vessel speed, course alteration, look-outs, ramp-ups, and power-downs when marine mammals are seen within defined ranges (see Mitigation) should further reduce short-term reactions to disturbance, and minimize any effects on hearing sensitivity.

Conclusions- Effects on Pinnipeds

California sea lions are the most likely pinniped species to be encountered during the proposed seismic survey in the southern Gulf of California. It is estimated that 50 sea lions (out of a population of 209000) may be exposed to noise levels greater than 160 dB during the proposed survey. It is unlikely that northern elephant seals or Guadalupe fur seals will be encountered. If members of either of those species are encountered, they will be extralimital individuals. A precautionary estimate of 2 northern elephant seals and 2 Guadalupe fur seals may be encountered. The proposed seismic survey would have, at most, a short-term effect on their behavior and no long-term impacts on individual pinnipeds or their populations. Responses of pinnipeds to acoustic disturbances are variable, but usually quite limited. Effects are expected to be limited to short-term and localized

behavioral changes falling within the MMPA definition of Level B harassment.

In light of the type of take expected and the relatively small numbers of affected pinnipeds, the action is expected to have no more than a negligible impact on the affected species or stocks of marine mammals. In addition, mitigation measures such as controlled vessel speed, course alteration, look-outs, ramp-ups, and power-downs when marine mammals are seen within defined ranges (see Mitigation) should further reduce short-term reactions to disturbance, and minimize any effects on hearing sensitivity.

ESA

NMFS issued a biological opinion regarding the effects of this action on ESA-listed species and critical habitat. That biological opinion concluded that this action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. A copy of the Biological Opinion is available upon request (see **ADDRESSES**).

National Environmental Policy Act (NEPA)

The NSF made a Finding of No Significant Impact (FONSI) determination on October 2, 2003, based on information contained within its EA, that implementation of the subject action is not a major Federal action having significant effects on the environment within the meaning of Executive Order 12114. NSF determined therefore, that an environmental impact statement would not be prepared. On March 18, 2004 (69 FR 12832), NMFS noted that the NSF had prepared an EA for the Gulf of California surveys and made this EA available upon request. In accordance with NOAA Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NMFS has reviewed the information contained in NSF's EA and determined that the NSF EA accurately and completely describes the proposed action alternative, reasonable additional alternatives, and the potential impacts on marine mammals, endangered species, and other marine life that could be impacted by the preferred alternative and the other alternatives. Therefore, it is not necessary to issue a new EA, supplemental EA or an environmental impact statement for the issuance of an IHA to Scripps for this activity. Based on this review and analysis, NMFS is adopting the NSF EA under 40 CFR 1506.3 and has made its own FONSI. A copy of the NSF EA and the NMFS FONSI for this activity is available upon request (see **ADDRESSES**).

Authorization

NMFS has issued an IHA to take marine mammals, by harassment, incidental to conducting seismic surveys in the Gulf of California to Scripps for a 1–year period, provided the mitigation, monitoring, and reporting requirements are undertaken.

Dated: May 28, 2004.

Laurie K. Allen,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–12811 Filed 6–4–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Consideration will be given to all comments received by July 7, 2004.

Title and OMB Number: Post-Election Survey of Overseas Citizens, Post-Election Survey of Local Election Officials; OMB Number 0704–0125.

Type of Request: Extension.

Number of Respondents: 2,343.

Responses per Respondent: 1.

Annual Responses: 2,343.

Average Burden per Response: 10 minutes.

Average Burden Hours: 391 hours.

Needs and Uses: The information collection requirement is necessary to meet a requirement of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) of 1986 (42 U.S.C. 19073ff). UOCAVA requires a report to the President and Congress on the effectiveness of assistance under the Act, a statistical analysis of voter participation, and a description of State-Federal cooperation. UOCAVA requires the states to allow Uniformed Services personnel, their family members, and overseas citizens to use absentee registration procedures, and to vote by absentee ballot in general, special, primary, and runoff elections for Federal offices. The Act covers members of the Uniformed Services and the merchant marine to include the commissioned corps of the National Oceanic and Atmospheric Administration and Public Health Service, and their eligible dependents, Federal civilian employees overseas, and overseas U.S. citizens not affiliated with the Federal government. The Federal Voting Assistance Program conducts the post-election survey on a statistically random basis to determine participation rates that are representative of all citizens covered by the Act, measure State-Federal cooperation, and evaluate the effectiveness of the overall absentee voting program. The information collected is used for overall program evaluation, management and improvement, and to compile the congressionally mandated report to the President and Congress.

Affected Public: Individuals or households; state, local or tribal government.

Frequency: Quadrennially.

Respondents Obligation: Voluntary.

OMB Desk Officer: Ms. Jacqueline Zeiher. Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing. Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/ESCD/Information Management Division, 1225 South Clark Street, Suite 504, Arlington, VA 22202–4326.

Dated: May 28, 2004.

L.M. Bynum,

Liaison Officer, Department of Defense.

[FR Doc. 04–12724 Filed 6–4–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense; Establishment of U.S. Army Amputee Patient Care Program Board

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: The U.S. Army Amputee Patient Care Program Board is being established in the public interest, and in accordance with the provisions of the "Federal Advisory Committee Act," title 5 U.S.C., appendix II.

The Board shall serve in an advisory capacity to broaden the scope of vision for the U.S. Army Amputee Patient Care Program. The Board will make such suggestions for the improvement of the program as it deems necessary. The Board will consist of nine members

selected on a standardized basis for their preeminence in the field of amputee patient care. The Board will include members familiar with aspects of patient care, psychosocial issues, and family issues. Members will also be chosen who have broad experience in areas which impact on quality improvement in amputee patient care such as education and training. The Board shall meet at least twice each year to monitor the amputee patient care programs and services and insure effective organizational planning. The Board will also ensure that through the collaboration of a multi-disciplinary team, the U.S. Army Amputee Patient Care Program is providing world-renowned amputee care, assisting their patients as they return to the highest levels of physical, psychological, and emotional well being.

FOR FURTHER INFORMATION CONTACT: Contact Ms. Jennifer Spaeth, DoD Committee Management Officer, 703–588–8151.

Dated: May 28, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–12725 Filed 6–4–04; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary; Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Employment of the National Ignition Facility (NIF) will meet in closed session on June 21–22, 2004, at Lawrence Livermore National Laboratory. This Task Force will review the experimental program under development for the National Ignition Facility, NIF is a key component of the National Nuclear Security Administration's (NNSA's) Stockpile Stewardship Program to maintain the nuclear weapons stockpile without nuclear testing. The NIF is a 192-beam laser designed to achieve fusion ignition and produce high-energy-density condition approaching those of nuclear weapons. NNSA and the high-energy-density physics community have developed a plan for activation and early use of NIF which includes a goal to demonstrate ignition by 2010 and also supports high priority, non-ignition experiments required for stockpile stewardship. In this assessment, the task force will assess the proposed ignition and "non-ignition" high-energy-density experimental programs at NIF. Review the overall balance and priority of activities within the proposed plan and the degree to which the proposed program of NIF experiments supports the near and long term goals of stockpile stewardship and the overall NIF mission. Assess the potential for NIF to support the design and development of new weapons. Focus on the extent to which major stakeholders in NIF are effectively integrated into the plan.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisitions, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will assess the proposed ignition and "non-ignition" high-energy-density experimental programs at NIF. Review the overall balance and priority of activities within the proposed plan and the degree to which the proposed program of NIF experiments supports the near and long term goals of stockpile stewardship and the overall NIF mission. Assess the potential for NIF to support the design and development of new weapons. Focus on the extent to which major stakeholders in NIF are effectively integrated into the plan.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. app. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and (4) and that, accordingly, these meetings will be closed to the public.

Dated: May 28, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–12726 Filed 6–4–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date(s) of Meeting: 10 & 11 June 2004.

Time(s) of Meeting: 0800–1700, 10 June 2004; and 0800–1700, 11 June 2004.

Place: Hilton Hotel, Crystal City, VA.

1. *Agenda:* The Army Science Board FY04 Summer Studies, Force Balance and FCS Urban Operations are holding a plenary meeting on the 10th & 11th of June 2004. The meeting will be held at the Hilton Hotel in Crystal City, VA. The meeting will begin at 0800 hrs on the 10th and will end at approximately 1700 hrs on the 11th. For further information regarding Force Balance, please contact LTC Al Alkee @ (703)–601–0676 or e-mail *@Alvin.Klee@ocar.army.pentagon.mil.* For FCS Urban Operations, please contact MAJ Al Visconti @ (865) 574–8798 or e-mail *@viscontiaj@ornl.gov.*

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 04–12802 Filed 6–4–04; 8:45 am]

BILLING CODE 3710–08–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Recommendation 2004–1]

Oversight of Complex, High-Hazard Nuclear Operations

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice, recommendation.

SUMMARY: The Defense Nuclear Facilities Safety Board has unanimously approved Recommendation 2004–1, for DOE to consider. Recommendation 2004–1 deals with Oversight of Complex, High-Hazard Nuclear Operations.

DATES: Comments, data, views, or arguments concerning the recommendation are due on or before July 7, 2004.

ADDRESSES: Send comments, data, views, or arguments concerning this recommendation to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2001.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri or Andrew L. Thibadeau at the address above or telephone (202) 694–7000.

Dated: June 1, 2004.

John T. Conway,

Chairman.

[Recommendation 2004–1]

Oversight of Complex, High-Hazard Nuclear Operations

Dated: May 21, 2004.

Background

In furtherance of its statutory duty to oversee the Department of Energy's

(DOE) protection of workers and the public from hazards at defense nuclear facilities operated for DOE and the National Nuclear Safety Administration (NNSA), the Defense Nuclear Facilities Safety Board (Board) conducted eight public hearings to examine DOE's current and proposed methods of ensuring safety at its defense nuclear facilities.

In these hearings, the Board also sought to benefit from the lessons learned as a result of investigations conducted following the *Columbia* Space Shuttle disaster and the discovery of the deep corrosion in the reactor vessel head at the Davis-Besse Nuclear Power Plant. The Board received testimony from representatives of the Nuclear Regulatory Commission; the Naval Reactors Program; the Columbia Accident Investigation Board; the Deputy Secretary of Energy; the Administrator of NNSA; DOE's Under Secretary of Energy, Science and Environment; DOE's Assistant Secretary for Environment, Safety, and Health; and selected site managers of DOE's facilities, senior contractor managers, and members of the public.

The overall objective of the hearings was to gather information that could be helpful in assessing DOE's proposals for changing the methods it uses for contract management and nuclear safety oversight, as they have been controlled through the DOE Directives System. NNSA has proposed shifting responsibility for safety oversight from DOE Headquarters to the DOE field offices and site contractors. The key question the Board sought to address was: Will modifications proposed by DOE/NNSA to organizational structure and practices, as well as increased emphasis on productivity, improve or reduce safety, and increase or decrease the possibility of a high-consequence, low-probability nuclear accident?

DOE's programs for national security and environmental protection are complex, with potentially high consequences if not safely performed. Mishandling of nuclear materials and radioactive wastes could result in unintended nuclear criticality, dispersal of radioactive materials, and even nuclear detonation. DOE has a long and successful history of nuclear operations, during which it has established a structure of requirements directed to achieving nuclear safety. That structure is based on such methods as defense in depth, redundancy of protective measures, robust technical competence in operations and oversight, extensive research and testing, a Directives System embodying nuclear safety requirements, Integrated Safety Management, and processes to ensure safe performance.

The United States owns the defense nuclear facilities at which its programs are carried out by a government agency—DOE. Each such facility is operated by a contractor that was selected by DOE on the basis of being best suited to conduct the work for DOE at that site. Under the original Atomic Energy Act of 1946 and continuing to date in the Atomic Energy Act of 1954, as amended, the government officials in charge (*i.e.*, the Secretary of Energy and other line officers) have a statutory responsibility to protect health and minimize danger to life or property. In any delegation of responsibility or authority to lower echelons of DOE or to contractors, the highest levels of DOE continue to retain safety responsibility. While this responsibility can be delegated, it is never ceded by the person or organization making the delegation. Contractors are responsible to DOE for safety of their operations, while DOE is itself responsible to the President, Congress, and the public.

This reality was highlighted during the course of the Board's hearings. Many important lessons were cited in the testimony provided. These included the importance of a centralized and technically competent oversight authority, central control of technical safety requirements and waivers for departure from those requirements, an ability to operate in a decentralized mode when appropriate, a willingness to accept criticisms, the need for retention of technical expertise and capabilities at high levels of any organization in which technical failure could have high consequences, and an awareness that complacency can arise from a history of successes. DOE representatives testified that DOE's attention to safety has continued to improve with better on-site oversight and self-assessment programs, use of Integrated Safety Management, careful attention to safety statistics, and stabilization and disposal of high risk nuclear materials. However, cause for concern with regard to the potential increase in the possibility of nuclear accidents was also evident in: (1) The increased emphasis on productivity at the possible expense of safety, (2) the loss of technical competency and understanding at high levels of DOE's and NNSA's organizational structure, (3) the apparent absence of a strong safety research focus, and (4) the reduced central oversight of safety.

Clearly, safety performance can benefit from attention to detail and lessons learned from small incidents and minor accidents. However, failures leading to high-consequence, low-probability accidents would likely have their roots in interactions between engineering failures and improper human actions. Because the consequences of large nuclear accidents would be unacceptable, the nuclear weapons complex cannot permit them to occur. While the potential for such accidents cannot be completely eliminated, their likelihood can be held to an insignificant level by rigorous attention to Integrated Safety Management with technical and operational excellence based on nuclear safety standards subject to rigorous oversight. In addition, nuclear safety must be founded on solid research, analysis, and testing to ensure an adequate understanding of energetic initiating mechanisms under off-normal conditions.

DOE has taken some preliminary steps toward its proposed changes in safety practices. These actions may have contributed to some unfortunate consequences, such as the following:

- A glovebox fire occurred at the Rocky Flats closure site, where, in the interest of efficiency, a generic procedure was used instead of one designed to identify and control specific hazards. Apparently, success of the cleanup project resulted in management complacency. DOE site management had given the impression that safety was less important than progress, and contract management had not emphasized oversight of work control processes.
- Downsizing of safety expertise has begun in NNSA's NA–53 organization, while field organizations such as the Albuquerque Service Center have not developed an equivalent technical capability in a timely manner. As a result, NNSA field offices are left without an adequate depth of understanding of such important matters as seismic analysis and design, training of nuclear workers, and protection against unintended criticality.
- DOE's Office of Environmental Safety and Health, with assistance from some sites and contractors, has reviewed DOE Directives to simplify safety requirements, with the objective of supporting accelerated operations that are also more efficient. This shift has led to proposals for downgrading some worker safety Directives to the level of guidance and modifying some radiation protection requirements. It has also led to a proposed modification of the Order on Worker Safety and Health to reduce requirements for protecting workers from the consequences of fires,

explosions, and discharges from high-pressure systems.

Proposed modifications to DOE and NNSA's organizational structure, manpower, contract management, oversight policies and practices, and safety directives could have unintended consequences. These include reduction of defense in depth, potentially inconsistent safety-related decisions caused by decentralization of safety authority, emphasis on performance as opposed to safety, and reduction of technical capability at key points in the organizational structure. DOE and NNSA line managers could be left with inadequate awareness of safety issues.

As a result of testimony it has received, the Board is not convinced of the benefit of the changes to DOE's and NNSA's organizational structure and practices as they have been described. The Board cautions that if any such changes are made, they must be done formally and deliberatively, with due attention given to unintended safety consequences that could reduce the present high level of nuclear safety. DOE should take full advantage of lessons learned from safety problems discovered by National Aeronautics and Space Administration and Nuclear Regulatory Commission, and it should learn from the success of the good organizational and safety practices championed by the Naval Reactors Program. The Board needs to be sure that any fundamental reorganization does not degrade nuclear safety, and that the likelihood of a serious accident, facility failure, construction problem, or nuclear incident will not be increased as a result of well-intentioned changes.

As a result of testimony received at the public hearings and the potential effects on safety at defense nuclear facilities outlined above, the Board recommends:

1. That delegation of authority for nuclear safety matters to field offices and contractors be contingent upon the development and application of criteria and implementing mechanisms to ensure that:

a. Oversight responsibility includes the capability for examining, assessing, and auditing by all levels of the DOE organization,

b. The technical capability and appropriate experience for effective safety oversight is in place, and

c. Corrective action plans consistent with recommendations resulting from internal DOE and NNSA reviews of the Columbia accident and the Davis-Besse incident are issued.

2. That to ensure that any features of the proposed changes will not increase the likelihood of a low-probability, high-consequence nuclear accident, DOE and NNSA take steps to:

a. Empower a central and technically competent authority responsible for operational and nuclear safety goals, expectations, requirements, standards, directives, and waivers;

b. Ensure the continued integration and support of research, analysis, and testing in nuclear safety technologies; and

c. Require that the principles of Integrated Safety Management serve as the foundation of the implementing mechanisms at the sites.

3. That direct and unbroken line of roles and responsibilities for the safety of nuclear operations—from the Secretary of Energy and the NNSA Administrator to field offices and sites—be insured according to appropriate Functions, Responsibilities, and Authorities documents and Quality Assurance Implementation Plans.

4. That prior to final delegation of authority and responsibility for defense nuclear safety matters to the field offices and contractors, DOE and NNSA Program Secretarial Officers provide a report to the Secretary of Energy describing the results of actions taken in conformance with the above recommendations.

John T. Conway,

Chairman.

[FR Doc. 04–12741 Filed 6–4–04; 8:45 am]

BILLING CODE 3670–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 7, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Alice Thaler, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: June 1, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: New.

Title: Final Performance Report for Preparing Tomorrow's Program To Use Technology (PT3) Grant Program.

Frequency: One time.

Affected Public: Not-for-profit institutions; Businesses or other for-profit; State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 197.

Burden Hours: 3,940.

Abstract: This is the final performance report for approximately 197 PT3 FY 2000, 2001, and 2003 grantees. It is required by statute, Title II, Part B, by EDGAR 75.590, and by the Government Performance and Results Act (GPRA).

Requests for copies of the submission for OMB review; comment request may be accessed from *http://www.edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2486. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the

Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–12742 Filed 6–4–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 7, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Alice Thaler, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: June 2, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Innovation and Improvement

Type of Review: Reinstatement.

Title: Parental Information and Resource Center Annual and Final Performance Report.

Frequency: Annually.

Affected Public: Not-for-profit institutions (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 84.

Burden Hours: 504.

Abstract: Recipients of grants under the Parental Information and Resource Center Program must submit an annual performance report that establishes substantial progress toward meeting their project objectives to receive a continuation award.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2423. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–12798 Filed 6–4–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Nonproliferation Policy; Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Notice of subsequent arrangement.

SUMMARY: This notice has been issued under the authority of section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160). The Department is providing notice of a proposed "subsequent arrangement" under the Agreement for Cooperation Concerning Civil Uses of Atomic Energy between the United States and Canada and Agreement for Cooperation in the Peaceful Uses of Nuclear Energy between the United States and the European Atomic Energy Community (EURATOM).

This subsequent arrangement concerns the retransfer of 813,600 kg of U.S.-origin natural uranium hexafluoride, 550,000 kg of which is uranium, from Cameco Corporation, Port Hope, Ontario, Canada, to Eurodif Production (Eurodif), Pierrelatte France. The material, which is now located at Cameco Corp., Port Hope, Ontario, will be transferred to Eurodif for enrichment. Upon completion of the enrichment, the material will be used at Electricite de France as reactor fuel. Cameco Corp. originally obtained the uranium hexafluoride under the UF6 Feed Component Implementation Contract.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, we have determined that this subsequent arrangement is not inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Kurt Siemon,

Acting Director, Office of Nonproliferation Policy.

[FR Doc. 04–12764 Filed 6–4–04; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OEI–2004–0001; FRL–7670–7]

Agency Information Collection Activities: Proposed Collection; Comment National Survey of Successful Waste Disposal Programs in Rural Areas in the United States, EPA ICR Number 2142.01

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request for a new collection. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before August 6, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OEI–2004–01, to EPA online using EDOCKET (our preferred method), by e-mail to *oei.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Environmental Information Docket, Mail Code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Erin Newman, Region 5 Air and Radiation Division (AR–18J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; telephone number: 312–886–4587; fax number: 312–886–0617; e-mail address: *newman.erin@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OEI–2004–001, which is available for public viewing at the Office of Environmental Information Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Office of Environmental Information Docket is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket.*

Affected entities: Entities potentially affected by this action are State, local, and tribal environmental officials, soil and water conservation districts, and fire departments.

Title: National Survey of Successful Waste Disposal Programs in Rural Areas in the United States.

Abstract: Under a USEPA grant, the Research Foundation for Health and Environmental Effects (RFHEE) will conduct a survey of household waste disposal options. In conjunction with the Rural Community Assistance Program and the National Volunteer Fire Council, RFHEE will develop a targeted survey to find successful methods of household trash disposal in rural areas besides burning, which releases toxics chemicals into the environment. The Partners will conduct telephone interviews with state officials who have trash burning bans (25 states) or who are concerned about the issue. In addition, a sample of local officials, Soil and Water Conservation Districts, and local volunteer firefighters will be surveyed as well. The purpose of the survey is to find alternative, economically-feasible options for disposal. The results of the survey will be available to the public. This survey will not be used for any federal regulatory purposes. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Burden Statement: The survey will be shared with approximately 100 respondents and is expect to take 20 minutes to complete. Participation is strictly voluntary and will be a one time occurance. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: May 19, 2004.

Norman Niedergang,

Acting Regional Administrator, Region 5.

[FR Doc. 04–12777 Filed 6–4–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7670–6]

Science Advisory Board (SAB) Staff Office; Notification of Upcoming Meeting of the Critical Ecosystem Assessment Model (CrEAM) Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA's Science Advisory Board (SAB) Staff Office is announcing a public meeting of the SAB Critical Ecosystem Assessment Model (CrEAM) Review Panel.

DATES: June 29–30, 2004. The SAB Critical Ecosystem Assessment Model Review Panel will meet face-to-face starting Tuesday, June 29 at 9 a.m., adjourning at approximately 4 p.m. (central time) Wednesday, June 30. The purpose of this meeting is to conduct a review of the CrEAM developed by EPA Region V.

ADDRESSES: The public meeting of the Panel will be held in the Lake Huron Room of the Adamkus Conference and Training Center, U.S. EPA Region V Office, 77 West Jackson Boulevard, Chicago IL 60643.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding the public meeting may contact Dr. Thomas Armitage, Designated Federal Officer (DFO), U.S. EPA SAB by telephone/voice mail at (202) 343–9995, fax at (202) 233–0643, by e-mail at *armitage.thomas@epa.gov*, or by mail at U.S. EPA SAB (1400F), 1200 Pennsylvania Ave., NW., Washington, DC, 20460. General information about the SAB and the meeting location may be found on the SAB Web site, *http://www.epa.sab.*

SUPPLEMENTARY INFORMATION:

Summary: Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given that the Panel will hold a public meeting to provide advice to the EPA on the Agency's Critical Ecosystem Assessment Model. The dates and times for the meeting are provided above.

Background: Background on the meeting described in this notice was provided in a **Federal Register** Notice published on April 15, 2004 (69 FR 21524–21525). The SAB Staff Office has determined that the advisory on the CrEAM will be conducted by the SAB's Ecological Processes and Effects Committee augmented with experts in ecology and the use of geographic information system technology to evaluate data and conduct landscape scale analyses. A roster of Panel members, their biosketches, and the meeting agenda will be posted on the SAB Web site prior to the meeting.

Availability of Meeting Materials: A copy of the draft agenda for the meeting that is the subject of this notice will be posted on the SAB Web site prior to the meeting. Copies of the CrEAM review document may be obtained by contacting Dr. Mary White, EPA Region V, by telephone: (312) 353–5878, or e-mail: *white.mary@epa.gov.*

Procedures for Providing Public Comments: It is the policy of the EPA SAB to accept written public comments of any length, and to accommodate oral public comments whenever possible. The SAB Staff Office expects that public statements presented at the CrEAM panel meeting will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). Interested parties should contact the DFO in writing (e-mail, fax or mail—see contact information above) by close of business June 21, 2004 in order to be placed on the public speaker list for the meeting. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the participants and public at the meeting. *Written Comments:* Although the SAB Staff Office accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least seven business days prior to the meeting date so that the comments may be made available to the panel for their consideration. Comments should be supplied to the DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

Meeting Accommodations: Individuals requiring special accommodation to access the public meetings listed above should contact the DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: June 1, 2004.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 04–12776 Filed 6–4–04; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 69 FR 30293, May 27, 2004.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: Friday, June 4, 2004, at 10 a.m. (Eastern Time).

CHANGE IN THE MEETING: The meeting has been cancelled.

FOR FURTHER INFORMATION CONTACT: Stephen Llewellyn, Acting Executive Officer on (202) 663–4070.

Dated: June 2, 2004.

Stephen Llewellyn,

Acting Executive Officer, Executive Secretariat.

[FR Doc. 04–12862 Filed 6–3–04; 9:16 am]

BILLING CODE 6750–06–M

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Administration

Notice of Meeting of the Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction

ACTION: Notice.

SUMMARY: The Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction ("Commission") will meet in closed session on Wednesday, June 23, 2004 and Thursday, June 24, 2004 in its offices in Arlington, Virginia.

Executive Order 13328 established the Commission for the purpose of assessing whether the Intelligence Community is sufficiently authorized, organized, equipped, trained, and resourced to identify and warn in a timely manner of, and to support the United States Government's efforts to respond to, the development of Weapons of Mass Destruction, related means of delivery, and other related threats of the 21st Century. This meeting will consist of briefings and discussions involving classified matters of national security, including classified briefings from representatives of agencies within the Intelligence Community; Commission discussions based upon the content of classified intelligence documents the Commission has received from agencies within the Intelligence Community; and presentations concerning the United States' intelligence capabilities that are based upon classified information. While the Commission does not concede that it is subject to the requirements of the Federal Advisory Committee Act (FACA), 5 United States Code Appendix 2, it has been determined that the June 23–24 meeting would fall within the scope of exceptions (c)(1) and (c)(9)(B) of the Sunshine Act, 5 United States Code, Sections 552b(c)(1) & (c)(9)(B), and thus could be closed to the public if FACA did apply to the Commission.

DATES: Wednesday, June 23, 2004 (9 a.m. to 5 p.m.) and Thursday, June 24, 2004 (9 a.m. to 1 p.m.).

ADDRESSES: Members of the public who wish to submit a written statement to the Commission are invited to do so by

facsimile at (703) 414–1203, or by mail at the following address: Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction, Washington, DC, 20503. Comments also may be sent to the Commission by e-mail at *comments@wmd.gov*.

FOR FURTHER INFORMATION: Contact Brett C. Gerry, Associate General Counsel, Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction, by facsimile, or by telephone at (703) 414–1200.

Victor E. Bernson, Jr.,

Executive Office of the President, Office of Administration, General Counsel.

[FR Doc. 04–12756 Filed 6–2–04; 12:52 am]

BILLING CODE 3130–W4–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 1, 2004.

A. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105–1579:

1. BNP Paribas, Paris, France, and BancWest Corporation, Honolulu, Hawaii; to acquire 100 percent of the voting shares of USDB Bancorp, Stockton, California, and thereby indirectly acquire voting shares of Union Safe Deposit Bank, Stockton, California.

Board of Governors of the Federal Reserve System, June 1, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–12730 Filed 6–4–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Consumer Advisory Council

ACTION: Notice of Meeting of Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, June 24, 2004. The meeting, which will be open to public observation, will take place at the Federal Reserve Board's offices in Washington, D.C., in Dining Room E on the Terrace level of the Martin Building. Anyone planning to attend the meeting should, for security purposes, register no later than Tuesday, June 22, by completing the form found on–line at:

https://www.federalreserve.gov/secure/forms/cacregistration.cfm

Additionally, attendees must present photo identification to enter the building.

The meeting will begin at 9:00 a.m. and is expected to conclude at 1:00 p.m. The Martin Building is located on C Street, NW, between 20th and 21st Streets.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under various consumer financial services laws and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

Courtesy Overdraft Protection: Discussion of the proposed rules for bounced check protection programs under Regulation DD (Truth in Savings Act) and interagency guidance for financial institutions.

Foreign Bank Remittances and Access to Financial Services by New Immigrants: Discussion of challenges and opportunities to provide access to U.S. financial services for new immigrants.

Economic Growth and Regulatory Paperwork Reduction Act of 1996: Discussion of views on ways to reduce regulatory compliance burdens consistent with the consumer protections afforded by the rules under various statutes.

Community Reinvestment Act: Discussion of the major aspects of the agencies' proposal to revise the CRA regulations, based on public comment letters received.

Committee Reports: Council committees will report on their work.

Other matters initiated by Council members also may be discussed.

Persons wishing to submit views to the Council on any of the above topics may do so by sending written statements to Ann Bistay, Secretary of the Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Information about this meeting may be obtained from Ms. Bistay, 202–452–6470.

Board of Governors of the Federal Reserve System, June 1, 2004.

Robert deV. Frierson

Deputy Secretary of the Board

[FR Doc. 04–12729 Filed 6–4–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

[Docket No. OP–1201]

Privacy Act of 1974; Notice of Amendment of System of Records

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice: amendment of systems of records.

SUMMARY: In accordance with the Privacy Act, the Board of Governors of the Federal Reserve System (Board) is amending one system of records, entitled Federal Reserve Bank and Branch Directors (BGFRS–14), and removing another system of records, entitled Personnel Background Investigation Reports (BGFRS–2). We invite public comment on this publication.

DATES: Comment must be received on or before July 7, 2004.

ADDRESSES: You may submit comments, identified by Docket No. OP–1201, by any of the following methods:

- Agency Web Site: http://www.federalreserve.gov. Follow the instructions for submitting comments at http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.

- Federal Rulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.
- E–mail: *regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- FAX: 202/452–3819 or 202/452–3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551.

All public comments are available from the Board's web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, N.W.) between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boutilier, Managing Senior Counsel, (202/452–2418), Legal Division. For the hearing impaired only, contact Telecommunications Device for the Deaf (TDD)(202/263–4869).

SUPPLEMENTARY INFORMATION: These two systems have not been updated for several years. The system entitled Personnel Background Investigation Reports (BGFRS–2) covers records contained in OPM/CENTRAL–9, which is a government–wide system maintained by the Office of Personnel Management. Accordingly, the Board's system is being removed as duplicative and unnecessary.

The Federal Reserve Bank and Branch Directors system is being amended to reflect changes in storage methods and other procedures and to include appropriate routine uses.

In accordance with 5 U.S.C. 552a(r), a report of these amended systems of records is being filed with the President of the Senate, the Speaker of the House of Representatives, and the Director of the Office of Management and Budget. These amendments will become effective on July 26, 2004, without further notice, unless the Board publishes a notice to the contrary in the Federal Register.

Accordingly, the system of records entitled Personnel Background Investigation Reports (BGFRS–2) is removed, and the system of records entitled Federal Reserve Bank and Branch Directors (BGFRS–14) is amended as follows.

BGFRS 14

SYSTEM NAME:

Federal Reserve Bank and Branch Directors

SYSTEM LOCATION:

Board of Governors of the Federal Reserve System, 20th and Constitution, NW, Washington, DC 20551

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Past and present Federal Reserve Bank and Branch directors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographical sketches or resumes of Federal Reserve Bank and Branch directors, appointment and acceptance letters, oaths of office, and letters of resignation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 3, 4 and 11 of the Federal Reserve Act (12 USC §§ 521; 301 – 305; and 248(f)).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES.

a. To disclose pertinent information to the appropriate federal, state, or local agency responsible for investigation, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Board becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to another federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a federal agency when the Board or Federal government is a party to the judicial or administrative proceeding.

c. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

d. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

e. To disclose information to officials of state or local bar associations or disciplinary boards or committees when they are investigating complaints against attorneys in connection with their representation of a party before the Board, Equal Employment Opportunity Commission, or a court.

f. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), when necessary to obtain information relevant to a Board decision to issue a security clearance, conduct a security or suitability investigation of an individual, classify jobs, let a contract, or issue a license, grant, or other benefits.

g. To disclose to a Federal Reserve Bank or a federal agency in the executive, legislative, or judicial branch of government, in response to its request information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, or the lawful statutory, administrative, or investigative purpose of the Federal Reserve Bank or agency to the extent that the information is relevant or necessary to the requesting Federal Reserve Bank's or agency's decision or action.

h. To disclose information to Federal Reserve Banks, contractors, or agents in connection with work performed on behalf of the Board.

i. To disclose information to the National Archives and Records Administration in connection with records management inspections and its role as Archivist.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM.

Storage. In paper and electronic format.

Retrievability. Indexed by name, Federal Reserve district and class of director.

Safeguards. Paper copies are locked in file cabinets. Access to both paper copies and electronic information is limited to authorized Board staff.

Retention and disposal. Files are to be retained a minimum of five years, and then destroyed when no longer needed for administrative or reference purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Secretary of the Board, Board of Governors of the Federal Reserve System, 20th and Constitution, NW, Washington, DC 20551.

NOTIFICATION PROCEDURE:

Inquiries should be sent to the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, N.W., Washington, DC 20551. The request should contain the individual's name, approximate date of record, applicable Federal Reserve district, and type of director position.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Generated by individual's incoming correspondence and staff response thereto.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT.

None

By order of the Board of Governors of the Federal Reserve System, June 1, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–12728 Filed 6–4–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension; Correction

AGENCY: Federal Trade Commission ("FTC" or "Commission").

ACTION: Notice; correction.

SUMMARY: The Federal Trade Commission published a document in the **Federal Register** of May 17, 2004, seeking public comments on its proposal to extend through August 31, 2007, the current Paperwork Reduction Act clearance for information collection requirements contained in its regulations under the Comprehensive Smokeless Tobacco Health Education Act of 1986 ("Smokeless Tobacco Act" or the "Act"). The document contained an incorrect matter number and did not include an e-mail address for submitting public comments in electronic form.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be addressed to Rosemary Rosso, Attorney, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326–2174.

Correction

In the **Federal Register** of May 17, 2004, in FR Doc. 04–11101, on page 27926, in the second column, correct the **ADDRESSES** caption to read:

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to "Smokeless tobacco Regulations: Paperwork Comment, [R01009]" to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled "Confidential."[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form (except comments containing any confidential material) should be sent to the following e-mail box: *smokelesstobacco@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Donald S. Clark,

Secretary.

[FR Doc. 04–12778 Filed 6–4–04; 8:45 am]

BILLING CODE 6750–07–M

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

GENERAL ACCOUNTING OFFICE

Appointments to the Medicare Payment Advisory Commission

AGENCY: General Accounting Office (GAO).

ACTION: Notice of appointments.

SUMMARY: The Balanced Budget Act of 1997 established the Medicare Payment Advisory Commission (MedPAC) and gave the Comptroller General responsibility for appointing its members. This notice announces four new appointments and two reappointments to fill the vacancies occurring this year.

DATES: Appointments are effective May 1, 2004 through April 30, 2007.

ADDRESSES: GAO: 441 G Street, NW., Washington, DC 20548. MedPAC: 601 New Jersey Avenue, NW., Suite 9000, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: GAO: Molly Ryan, (202) 512–3592. MedPAC: Mark E. Miller, Ph.D., (202) 220–3700.

SUPPLEMENTARY INFORMATION: To fill this year's vacancies I am announcing the following:

Newly appointed members are John M. Bertko, F.S.A., M.A.A.A., vice president and chief actuary, Humana Inc.; Francis J. Crosson, M.D., executive director, the Permanente Federation, LLC; Arnold Milstein, M.D., M.P.H., medical director, Pacific Business Group on Health and U.S. health care thought leader, Mercer Human Resource Consulting; and William J. Scanlon, Ph.D., health policy consultant. Reappointed members are Sheila P. Burke, M.P.A., R.N., under secretary for American museums and national programs, Smithsonian Institution; and Ralph W. Muller, chief executive officer, University of Pennsylvania Health System.

(Sec. 4022, Pub. L. 105–33, 111 Stat. 251, 350)

David M. Walker,

Comptroller General of the United States.

[FR Doc. 04–12762 Filed 6–4–04; 8:45 am]

BILLING CODE 1610–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–0236]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary; HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of

proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

#1 Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Financial Summary of Obligation and Expenditure of Block Grant Funds (45 CFR 96.30) and SF 269A;

Form/OMB No.: OS–0990–0236;

Use: This collection is needed to allow HHS to verify the financial status of block grant funds and determine aggregate obligations, expenditures and available balances in order to close out the grant account in accordance with Public Law 101–51.

Frequency: Annually.

Affected Public: State, local or tribal government.

Annual Number of Respondents: 620.

Total Annual Responses: 620.

Average Burden Per Response: 1 hour.

Total Annual Hours: 620.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer at the address below: OMB Desk Officer: John Kraemer, OMB Human Resources and Housing Branch, Attention: (OMB #0990–0236), New Executive Office Building, Room 10235, Washington DC 20503.

Dated: May 26, 2004.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 04–12803 Filed 6–4–04; 8:45 am]

BILLING CODE 4168–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–0208]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

#1 Type of Information Collection Request: Extension of a currently approved collection.

Title of Information Collection: Applicant Background Survey.

Form/OMB No.: OS–0990–0208.

Use: This form will be used to ask applicants for employment how they learned about a vacancy to ensure that recruitment sources yield qualified women and minority applicants, as well as applicants with disabilities, in compliance with EEOC management directives.

Frequency: Reporting.

Affected Public: Individuals or Households.

Annual Number of Respondents: 30,000.

Total Annual Responses: 30,000.

Average Burden Per Response: 2 minutes.

Total Annual Hours: 1,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer at the address below: OMB Desk Officer: John Kraemer, OMB Human Resources and Housing Branch, Attention: (OMB #0990–0208), New Executive Office Building, Room 10235, Washington DC 20503.

Dated: May 26, 2004.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 04–12804 Filed 6–4–04; 8:45 am]

BILLING CODE 4168–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Chronic Fatigue Syndrome Advisory Committee

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services is hereby giving notice that the Chronic Fatigue Syndrome Advisory Committee (CFSAC) will hold a meeting. The meeting will be open to the public.

DATES: The meeting will be held on Monday, June 21, 2004, from 9 am to 5 pm.

ADDRESSES: Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Room 505A, Washington, DC 20201.

FOR FURTHER INFORMATION, CONTACT: Dr. Larry E. Fields, Executive Secretary, Chronic Fatigue Syndrome Advisory Committee, Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Room 719H, Washington, DC 20201; (202) 690–7694.

SUPPLEMENTARY INFORMATION: CFSAC was established on September 5, 2002, to replace the Chronic Fatigue Syndrome Coordinating Committee. CFSAC was established to advise, consult with, and make recommendations to the Secretary, through the Assistant Secretary for Health, on a broad range of topics including (1) the current state of knowledge and research about the epidemiology and risk factors relating to chronic fatigue syndrome, and identifying potential opportunities in these areas; (2) current and proposed diagnosis and treatment methods for

chronic fatigue syndrome; and (3) development and implementation of programs to inform the public, health care professionals, and the biomedical, academic, and research communities about chronic fatigue syndrome advances.

The tentative agenda for this meeting is as follows:

9 a.m.—Chairperson
Call to Order
Request for Roll Call
Introductions and Opening Remarks
Approval of the Minutes of March 22nd, 2004
Discussion
9:20 a.m.—Executive Secretary
Roll Call
Summary of Public Comments
Operational Matters
Discussion
9:35 a.m.—Invited Speaker
CFS and the ICD–9–CM and ICD–10–CM codes
Donna Pickett, RHIA
Medical Classification Administrator
National Center for Health Statistics, NCHS/CDC/HHS
Discussion
10:30 a.m.—Break
10:45 a.m.—Invited Organizational Updates
Dr. Dharam V. Ablashi
American Association for Chronic Fatigue Syndrome (AACFS)
7th International Conference on CFS/FM and other activities
K. Kimberly McCleary
CFIDS Association of America
Public and Provider Attitudes
Jill McLaughlin
National CFIDS Foundation, Inc.
Patient Issues
Discussion
11:15 a.m.—Ex Officio Members
Requested follow-ups
Status of Departmental and broader CFS-related efforts
Discussion
11:30 a.m.—Public Comment
12 Noon—Lunch Break
1 p.m. Subcommittee Updates
Disabilities: Lyle Lieberman, Chair
Education: Dr. Roberto Patarca, Chair
Research: Dr. Nahid Mohagheghpour, Chair
3 p.m. Break
3:15 p.m. Development of Recommendations
Other CFS-related Matters
4 p.m. Public Comment
4:30 p.m. Summary
Action Steps
Timelines
5 p.m. Adjournment

Public attendance at the meeting is limited to space available. Individuals must provide a photo ID for entry into the meeting. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact person. Members of the public will have the opportunity to provide comments at the meeting. Pre-registration is required for public comment by June 14, 2004. Any individual who wishes to participate in the public comment session should call the telephone number listed in the contact information to register. Public comment will be limited to five minutes per speaker. Any members of the public who wish to have printed material distributed to CFSAC members should submit materials to the Executive Secretary, CFSAC, whose contact information is listed above prior to close of business June 14, 2004.

Dated: May 28, 2004.

Larry E. Fields,

Executive Secretary, Chronic Fatigue Syndrome Advisory Committee.

[FR Doc. 04–12800 Filed 6–4–04; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Presidential Advisory Council on HIV/AIDS

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (DHHS) is hereby giving notice that the Presidential Advisory Council on HIV/AIDS (PACHA) will hold a meeting. This meeting is open to the public. A description of the Council's functions is included with this notice.

DATES: June 28, 2004, 8:30 a.m. to 5 p.m., and June 29, 2004, 8:30 a.m. to 4 p.m.

ADDRESSES: Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. Conference Room 705A.

FOR FURTHER INFORMATION CONTACT: Josephine Bias Robinson, Acting, Executive Director, Presidential Advisory Council on HIV/AIDS, Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Room 701H, Washington, DC 20201; (202) 690–5560 or visit the Council's Web site at *http://www.pacha.gov.*

SUPPLEMENTARY INFORMATION: PACHA was established by Executive Order 12963, dated June 14, 1995, as amended by Executive Order 13009, dated June 14, 1996. PACHA was established to provide advice, information, and recommendations to the President regarding programs and policies intended to (a) promote effective prevention of HIV disease, (b) advance research on HIV and AIDS, and (c) promote quality services to persons living with HIV disease and AIDS. PACHA was established to serve solely as an advisory body to the President and to the Secretary of Health and Human Services. PACHA is composed of not more than 35 members. PACHA membership is determined by the Secretary from individuals who are considered authorities with particular expertise in, or knowledge of, matters concerning HIV/AIDS.

The agenda for this meeting includes the following topics: HIV/AIDS prevention, care and treatment, and global HIV/AIDS issues. Time will be allotted during the meeting for public comment.

Public attendance is limited to space available and pre-registration is required for both attendance and public comment. Any individual who wishes to attend and/or comment must call (202) 690–5560 to register. Individuals must provide a government issued photo ID for entry into the meeting. Individuals who need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the registrar.

Members of the public will have the opportunity to provide comments at the meeting. Public comment will be limited to three (3) minutes per speaker and to time available. Written testimony, not to exceed five (5) pages, will be accepted by mail or facsimile at (202) 690–7425.

Written testimony will not be accepted after 5 p.m., Wednesday, June 23, 2004.

Dated: May 18, 2004.

Josephine Bias Robinson,

Executive Director (Acting), Presidential Advisory Council on HIV/AIDS.

[FR Doc. 04–12733 Filed 6–4–04; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) allow the proposed information collection project: "AHRQ Grants Reporting System (GRS)." In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on April 5, 2004 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by July 7, 2004.

ADDRESSES: Written comments should be submitted to: Cynthia D. McMichael, Reports Clearance Officer, AHRQ, 540 Gaither Road, Suite 5022, Rockville, MD 20850. Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from AHRQ's Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Cynthia D. McMichael, AHRQ, Reports Clearance Officer, (301) 427–1651.

SUPPLEMENTARY INFORMATION:

Proposed Project

"AHRQ Grants Reporting System (GRS)"

AHRQ has identified the need to establish a systematic method for grantees to report project progress and important preliminary findings for grants funded by the Agency.

The proposed system will address the shortfalls in the current reporting process and establish a consistent and comprehensive grants reporting solution for AHRQ. Currently, AHRQ receives grants continuation applications on an annual basis from all grantees. The progress report, which represents a portion of the annual continuation application, is inadequate because it is too infrequent and does not necessarily capture the information that AHRQ requires to respond to internal and external inquiries.

The reporting system will also provide a centralized repository of grants research information that can be used to support initiatives within the Agency's research plans for the future and to support activities such as performance monitoring, budgeting, knowledge transfer as well as strategic planning.

AHRQ currently conducts quarterly conference calls with some grantees. The content, frequency, and focus of these calls vary. In some grant programs, the number of participants on these calls may be so large as to prohibit quarterly updates from all participants in order to avoid creating an extremely lengthy conference call and to allow the Agency to address other important issues during these calls.

The GRS will support the timely collection of important information related to the life cycle of a grant. This information includes: Significant changes in project goals, methods, study design, sample or subjects, interventions, evaluation, dissemination, training, key personnel, key preliminary findings; significant problems and resolutions; publications and presentations; tools and products; and new collaborations/partnerships with AHRQ grantees or others conducting related research. Collecting this information in a systematic manner will:

- Promote the transfer of critical information more frequently and efficiently which will enhance the Agency's ability to support research designed to improve the outcomes and quality of health care, reduce its costs, and broaden access to effective services.
- Increase the efficiency of the Agency in responding to ad-hoc information requests, Freedom of Information Act requests, and producing responses related to federally mandated programs and regulations.
- Establish a consistent approach throughout the Agency for information collection about grant progress and a systematic basis for oversight and for facilitating potential collaborations with or among grantees.
- Decrease the inconvenience and burden on grantees of unanticipated ad-hoc requests for information by the Agency in response to particular (one-time) internal and external requests for information.

Data Confidentiality Provisions

Confidential commercial information will be protected in accordance with 18 U.S.C. 1905. Information about Principal Investigators will be maintained in accordance with the Privacy Act, 5 U.S.C. 552a.

The submitted reports will be printed and included in the official grant file for each grant. All of these files will be retained according to existing agency policies and procedures and archived as required.

Methods of Collection

The data will be collected using an Adobe Acrobat Portable Document Format (PDF) electronic reporting form developed specifically for the purpose of collecting information quarterly. To reduce burden and to the extent possible, these forms will be pre-populated with reoccurring information needed to specifically identify the institution, project, principal investigator, and other similar information.

ESTIMATED ANNUAL RESPONDENT BURDEN

Survey	Number of respondents*	Estimated time per respondent in minutes	Estimated total burden hours	Estimated annual cost to the government
1st Quarter	500	10	83.33	0
2nd Quarter	500	10	83.33	0
3rd Quarter	500	10	83.33	0
Annual Total	1500	10	250	0

*The estimate for number of respondents for the initial implementation is 100 per quarter. The estimate included in the table assumes wider implementation by the Agency.

(There is currently an Annual Grants Progress Report that takes the place of having a 4th quarter report, which is the reason we only have 3 quarters. The estimate for number of respondents for the initial implementation is 100 per quarter. The estimate included in the table assumes wider implementation by the Agency.)

Request for Comments

In accordance with the above cited legislation, comments on the above described systematic grant oversight information collection are requested with regard to any of the following:

(a) Whether the proposed collection of information is necessary for the proper performance of functions of AHRQ, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: May 27, 2004.

Carolyn M. Clancy,

Director.

[FR Doc. 04–12656 Filed 6–4–04; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04093]

International Initiatives Related to Chronic Disease Prevention and Health Promotion; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2004 funds for a cooperative agreement program to promote health, disseminate information, and provide expertise to prevent and control: Non-communicable diseases; mental health problems; and leading causes of death, disease, and disability through effective community health programs. This is an international program. The Catalog of Federal Domestic Assistance number for this program is 93.283.

B. Eligible Applicant

Assistance will be provided only to The World Health Organization. WHO is the only international/intergovernmental agency qualified to conduct and coordinate surveillance and programmatic activities under this program announcement because:

1. WHO has a unique position among the world's health agencies as the technical agency for health within the United Nations.
2. WHO has access to all national health promotion and disease prevention programs and potential surveillance sites through its six regional offices located in Washington, DC; Copenhagen, Denmark; Cairo, Egypt; Congo; Delhi, India; Harare, Zimbabwe and Manila, Philippines. No other organization has this access.
3. WHO is uniquely qualified to conduct and coordinate the surveillance activities, policy and programmatic initiatives that have specific relevance to the objectives of this program announcement and which have the potential to advance knowledge that benefits the United States (U.S.).
4. WHO collaborates with other international organizations and works to accomplish its mission by coordinating programmatic and surveillance initiatives, disseminating information related to chronic disease program needs and services, recommending and advocating improved policies and programs. They provide consultation and guidance at the international, national, and local level for systems of coordinated care for persons with chronic or disabling conditions.
5. WHO also collaborates with other international organizations and works to accomplish its mission by coordinating surveillance initiatives, and by disseminating information and expertise at the international, national, and local level for effective health programs.
6. WHO offers special opportunities for furthering surveillance programs through the use of unique talent resources, populations, or environmental conditions in other countries that are not readily available in the United States or that provide augmentation of existing U.S. resources.
7. WHO works to accomplish its mission by coordinating monitoring and programmatic initiatives, and disseminating information and expertise related to effective community-based interventions that help to reduce the leading causes of death, disease and disability among adults (*i.e.*, cardiovascular disease, diabetes, tobacco use, physical inactivity, and poor dietary habits). It recommends and advocates for improved national and local health policies and programs, and provides consultation and guidance to address serious health problems among adults.

C. Funding

Approximately $1,610,000 is available in FY 2004 to fund this award. It is expected that the award will begin on or before August 15, 2004, and will be made for a 12-month budget period within a project period of up to 5 years. Funding estimates may change.

D. Where to Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For technical questions about this program, contact: Mary Hall, MS K40, 4770 Buford Hwy, NE., Atlanta, GA 30341, Telephone: 770–488–5644, E-mail: *moh4@cdc.gov.*

Dated: June 1, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–12781 Filed 6–4–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Obstetrician-Gynecologists' Knowledge and Practice Patterns With Regard to Hormone Therapy

Summary: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Heart, Lung and Blood Institute (NHLBI), the Office of Research on Women's Health (ORWH), the National Institutes of Health (NIH) and the Health Resources and Services Administration (HRSA) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. The proposed information collection was previously published in the **Federal Register** on November 12, 2003, page 64111 and allowed 60 days for public comment. A public comment was received from Wyeth Ayerst Pharmaceuticals. No other public comment was received. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB number.

Proposed Collection: Title: Obstetrician-Gynecologists' Knowledge and Practice Patterns with Regard to Hormone Therapy. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* This study will evaluate and track the effect of results from the Federally-funded Women's Health Initiative (WHI) trials of estrogen plus progestin and estrogen alone, and of updated guidelines provided by Federal agencies and professional bodies, on the knowledge, attitudes and prescription behavior of members of the American College of Obstetricians and Gynecologists (ACOG) in regard to the use of postmenopausal hormone threapy. The publication of the WHI trial findings for estrogen plus progestin in 2002 generated massive media coverage and revisions to the guidelines for the use of hormones, including revisions of the package insert by the Food and Drug Administration (FDA). The findings for estrogen alone published in April 2004 further contributed to the revised view of the value of hormone therapy to prevent chronic diseases. The WHI findings led to a marked decrease in the prescriptions for hormone therapy on a national level. They are thought to have had a major impact on obstetrician-gynecologists, who are among the principal health care providers for women and who prescribe hormones more frequently than any other health care provider specialty group. However, the impact obstetrician-gynecologists have not been studied systematically. The investigators propose to survey fellows of ACOG over a four and a half year period starting in 2004. Objectives of the study are to evaluate the extent to which the WHI findings for estrogen alone and for estrogen plus progestin have been accepted by ACOG members, what the effect has been on their prescription patterns, and to track changes over time as new guuidelines continue to appear. The initial survey will provide valuable information concerning ACOG members' knowledge of current and past research findings regarding hormone therapy, their awareness of ACOG and Federal guidelines for the use of hormone therapy, their own current practice and changes for past practice, their concerns and informational and educational needs. Two subsequent annual will allow the investigators to track changes in knowledge, attitudes, and practice over a period of evolving knowledge among a representatiave sample of obstetrician-gynecologists. The findings will assist the Government and professional bodies in evaluating the degree of translation of research findings into practice, and with developing educational materials for physicians to assist with translation. *Frequency of Response:* On occasion. *Affected Public:* Individuals or households; Businesses or other for-profit. *Type of Respondents:* Physicians. The annual reporting burden is as follows: *Estimated Number of Respondents:* 1875; *Estimated Number of Responses Per Respondent:* 1; *Average Burden Hours Per Response:* .33, and *Estimated Total Annual Burden Hours Requested:* 619. The annualized costs to respondents is estimated at: $46,425. There are no Capitol Costs to report. There are no Operating or Maintenanace Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of informatijon on those who are to respond including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503. Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Jacques E. Rossouw, Project Officer, Women's Health Initiative, NIH, NHLBI, 6101 Rockledge Drive Ste 8204 MSC 7935, Bethesda, MD 20892–7935, or call (301) 435–6669 (not a toll-free number) or E-mail your request, including your address to: *rossouwj@nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: May 18, 2004.

Barbara Alvin,

Director, Women's Health Initiative, National Institutes of Health.

[FR Doc. 04–12789 Filed 6–4–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel Clinical Centers in Research Excellence (CCRE).

Date: June 17–18, 2004.

Time: June 17, 2004, 8 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Marriott Gaithersburg, Washington Center, 9751 Washingtonian Blvd., Gaithersburg, MD 20878.

Contact Person: Mohan Viswanathan, PhD, Deputy Director, Office of Review, NCRR, National Institutes of Health, 6701 Democracy Blvd., Room 1084, MSC 4874, 1 Democracy Plaza, Bethesda, MD 20892–4874, 301–435–0829, *mv10f@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Center for Research Resources Special Emphasis Panel Centers for Interdisciplinary Research (01).

Date: June 20–21, 2004.

Time: June 20, 2004, 8 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Carol Lambert, PhD, Scientific Review Administrator, Office of Review, National Institutes of Health, NCRR, 6701 Democracy Blvd., 1 Democracy Plaza, Room 1076, MSC 4874, Bethesda, MD 20892, (301) 435–0814, *lambert@mail.nih.gov.*

Name of Committee: National Center for Research Resources Special Emphasis Panel Exploratory Centers for Interdisciplinary Research (02).

Date: July 22–23, 2004.

Time: July 22, 2004, 8 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Prabha L. Atreya, Scientific Review Administrator, Office of Scientific Review, National Institute of Biomedical Imaging and Bioengineering, Bethesda, MD 20892, (301) 496–8633, *atreyapr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: May 27, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–12790 Filed 6–4–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; "Medication Discovery Using Rat Models of Relapse to Drug Self-Administration".

Date: June 24, 2004.

Time: 10:30 a.m. to 1 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1438.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: May 27, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–12791 Filed 6–4–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Behavioral & Cognitive Processes Related to Adolescent Drug Abuse (RFA DA04–009).

Date: June 2–3, 2004.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mark R. Green, PhD, Deputy Director, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, 45 MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1431.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Member Conflict A.

Date: June 8, 2004.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mark R. Green, PhD, Deputy Director, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1431.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Member Conflict B.

Date: June 9, 2004.

Time: 10:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mark R. Green, PhD, Deputy Director, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1431.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; HIV/AIDS Prevention, Treatment, and Related Health Issues for Highly Vulnerable Youth (RFA DA04–012).

Date: June 29–30, 2004.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn, Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mark Swieter, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6101 Executive Boulevard, Suite 220, Bethesda, MD 20892–8401, (301) 435–1389.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Targeted Integrative Research in Drug Abuse and HIV/AIDS in Pregnancy.

Date: June 30, 2004.

Time: 9:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, 6101 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Eliane Lazar-Wesley, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, 20892–8401, 301–451–4530.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Centers Review Committee Meeting.

Date: July 12, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Ria Liu, PhD, Health-Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 212, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1388.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; RFA for Animal Models of Adolescent Drug Abuse: Integrative Studies of Brain and Behavioral Development.

Date: July 14–15, 2004.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Mark Swieter, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6101 Executive Boulevard, Suite 220, Bethesda, MD 20892–8401, (301) 435–1389.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Group Therapy for Individuals in Drug Abuse or Alcoholism Treatment.

Date: July 22–23, 2004.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcello, 2121 P Street, NW., Washington, DC 20037.

Contact Person: Kesinee Nimit, MD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1432.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: May 27, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–12792 Filed 6–4–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Substance Abuse and Mental Health Services Administration (SAMHSA) Drug Testing Advisory Board to be held in June 2004.

On June 8, the Board will meet in open session from 8:30 a.m. to 11:30 a.m. The open session will include a Department of Health and Human Services drug testing program update, a presentation on the revisions to the "Mandatory Guidelines for Federal Workplace Drug Testing" published in the **Federal Register** on April 13, 2004 (69 FR 19644–19673), and a Department of Transportation drug testing program update. If anyone needs special accommodations for persons with disabilities, please notify the Contact listed below.

The Board will meet in closed session on June 8, from 11:30 a.m. to 4:30 p.m. to review and evaluate proprietary testing processes and procedures of drug testing laboratories certified to perform drug testing in accordance with the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" (Mandatory Guidelines) published in the **Federal Register** (59 FR 29908–29931 on June 9, 1994), 63 FR 51118–51119 on September 30, 1997, and 63 FR 63483 on November 13, 1998). Public disclosure of information concerning proprietary laboratory testing processes would result in competitive harm to the laboratories and significantly impede the cooperation of laboratories in fully disclosing information to inspectors during laboratory inspections. The meeting must be conducted in closed session because disclosure of such proprietary laboratory information would significantly impede the Department's ability to certify laboratories to meet the standards of Subpart C of the Mandatory Guidelines and is therefore protected by exemption 9(B) of section 552b of title 5 U.S.C.

The Board will meet in closed session on June 9, from 8:30 a.m. until noon to review and discuss new specimen adulteration methods by which persons subject to drug testing may subterfuge the drug test and the Department's ability to detect them. This meeting must be conducted in closed session since disclosing information on such specimen adulteration methods will significantly frustrate the Department's ability to assure accurate and reliable drug and specimen validity testing, and is therefore protected by exemption 9(B) of section 552b(c) of title 5 U.S.C.

A roster of the board members may be obtained from: Mrs. Giselle Hersh, Division of Workplace Programs, 5600 Fishers Lane, Rockwall II, Suite 815, Rockville, MD 20857, 301–443–6014 (voice). The transcript of the open session will be available on the following Web site *http://workplace.samhsa.gov.* Additional information for this meeting may be obtained by contacting the individual listed below.

Committee: Substance Abuse and Mental Health Service Administration Drug Testing Advisory Board.

Meeting Date: June 8, 2004; 8:30 a.m.–4:30 p.m. June 9, 2004; 8:30 a.m.–Noon.

Place: Residence Inn by Marriott, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.

Type: Open: June 8, 2004; 8:30 a.m.–11:30 a.m. Closed: June 8, 2004; 11:30 a.m.–4:30 p.m. Closed June 9, 2004; 8:30 a.m.–Noon.

Contact: Donna M. Bush, Ph.D., Executive Secretary, 301–443–6014 (voice) or 301–443–3031 (fax).

Dated: May 17, 2004.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 04–12737 Filed 6–4–04; 8:45 am]

BILLING CODE 4162–20–M

DEPARTMENT OF HOMELAND SECURITY

Science and Technology Directorate; Notice of Intent To Prepare an Environmental Impact Statement

AGENCY: Science and Technology Directorate, DHS.

ACTION: Notice of intent to prepare an Environmental Impact Statement for the National Biosecurity Analysis and Countermeasures Center Facility at Fort Detrick, Maryland.

SUMMARY: The Department of Homeland Security (DHS) announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the construction and operation by DHS of the proposed new National Biosecurity Analysis and Countermeasures Center (NBACC) facility, at Fort Detrick in Frederick, Maryland. This EIS is being prepared and considered in accordance with requirements of the National Environmental Policy Act (NEPA) of 1969, regulations of the President's Council on Environmental Quality (40 CFR parts 1500–1508), and Army Regulation 200–2, Environmental Analysis of Army Actions (32 CFR 651), 29 March 2002. The U.S. Army, as owner of the site of the proposed NBACC facility, is a Cooperating Agency in the preparation of this EIS.

DATES: Pursuant to the National Environmental Policy Act, a Public Scoping meeting will be held on Tuesday, June 22, 2004, 7 p.m.

ADDRESSES: The meeting location is Frederick Community College, 7932

Opossumtown Pike, Frederick, MD 21702.

Comments on the scope of the EIS for the proposed project should be received no later than July 8, 2004. Additional information on how to submit comments is included in the **SUPPLEMENTARY INFORMATION** section.

SUPPLEMENTARY INFORMATION: The mission of the DHS, as stated in the Homeland Security Act (Pub. L. 107–296), is to prevent terrorist attacks within the United States, to reduce America's vulnerability to terrorism, and to minimize the damage and assist in recovery efforts from attacks that may occur. DHS has the specific responsibility to identify and develop countermeasures to biological threats in support of this mission. In accordance with specific national policy directives and DHS strategic policy, construction of the NBACC facility is proposed to support the DHS goals by countering bioterrorism threats through the conduct of research and operational programs.

To accomplish this mission, the proposed NBACC facility will provide the research laboratory and office space to meet program requirements for biological threat characterization and bioforensic operations and research.

- Biological Threat Characterization reduces the nation's vulnerabilities to biological threats by conducting research to better understand current biological threats as well as future threats. Additionally, this program will conduct science-based comprehensive risk assessments to anticipate, prevent, respond to and recover from an attack through the execution of an integrated science program at the NBACC facility.
- Bioforensics Operations and Research provides a validated, authoritative assessment of collected materials subject to forensic analysis. This same material may then be linked through identification of the biochemical fingerprint to the source.

The proposed NBACC facility will include laboratories designed and constructed to Biosafety Levels -2, -3, and -4 standards that will enable DHS researchers to safely conduct these research and forensics programs to accomplish this work. "Biosafety Levels" is a system of well-defined facilities, equipment, and procedures established to minimize risk of exposure to potentially hazardous agents for laboratory workers and the outside environment. The research conducted at NBACC will be solely defensive in nature, serving to understand and attribute the threats that may be used against the United States in a biological attack.

The proposed location is on an approximately 7-acre plot within the National Interagency Biodefense Campus on Area A of Fort Detrick, Maryland, near facilities of the U.S. Army Medical Research Institute of Infectious Diseases, the U.S. Department of Agriculture, and the planned National Institutes of Health Integrated Research Facility.

Issues to be analyzed in the EIS will include safety of laboratory operations; public health and safety; handling, collection, treatment, and disposal of research wastes; and analysis of other risks, as well as concerns for pollution prevention and impacts of the proposed action on air quality, biological resources, cultural resources, water resources, land use, and socioeconomic resources. The EIS will address several alternatives, including citing the proposed NBACC facility at another location on the grounds of Fort Detrick; locating the proposed NBACC facility on other existing government-owned property outside of Fort Detrick; siting the proposed NBACC facility on privately-owned property outside Fort Detrick; and a No-Action alternative, under which the proposed NBACC facility would not be built. Additional alternatives may be identified in the Public Scoping process.

Public Participation: The DHS and the U.S. Army invite full public participation to promote open communication and better decision-making. All interested persons and organizations, including minority, low-income, disadvantaged, and Native American groups, are urged to participate in this NEPA environmental analysis process. Assistance will be provided upon request to anyone with special needs to facilitate their participation in the NEPA process.

To ensure that the full range of issues related to this proposed action and the scope of this EIS are addressed, oral and written comments are invited from all interested parties, including appropriate federal, state, and local agencies, and private organizations and citizens.

Public comments are welcome throughout the NEPA process and should be directed to Kevin Anderson, Department of Homeland Security, 7435 New Technology Way, Suite A, Frederick, MD 21703. Additional formal opportunities for public participation after the Public Scoping are tentatively scheduled as follows:

Review and comment on the Draft EIS (including a public meeting), August–September 2004.

Public meeting on the Draft EIS, August 2004.

Notices of Availability for the Draft EIS, Final EIS, and Record of Decision will be provided through direct mail, the **Federal Register**, and other media. Notifications also will be sent to federal, state, and local agencies and persons and organizations that submit comments or questions throughout the NEPA process. Precise schedules and locations for public meetings will be announced in the local news media. Interested individuals and organizations may request to be included on the mailing list for public distribution of meeting announcements and associated documents.

FOR FURTHER INFORMATION CONTACT: Kevin Anderson, 301–846–2156.

Authority: 42 U.S.C. 4321–4347 (National Environmental Policy Act).

Dated: June 3, 2004.

Maureen I. McCarthy,

Director, Research and Development, Science and Technology Directorate.

[FR Doc. 04–12908 Filed 6–4–04; 8:45 am]

BILLING CODE 4410–10–U

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1516–DR]

Arkansas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Arkansas (FEMA–1516–DR), dated May 7, 2004, and related determinations.

EFFECTIVE DATE: May 7, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 7, 2004, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Arkansas, resulting from severe storms, flooding and landslides on April 19, 2004, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under

the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Arkansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Direct Federal Assistance is authorized, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under section 408 of the Stafford Act is later warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Carlos Mitchell, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Arkansas to have been affected adversely by this declared major disaster:

Baxter, Boone, Carroll, Franklin, Jackson, Johnson, Madison, Marion, Newton, Searcy, Stone, Washington, and Woodruff Counties for Public Assistance. Direct Federal Assistance is authorized, if warranted.

All counties within the State of Arkansas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–12793 Filed 6–4–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1516–DR]

Arkansas; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Arkansas (FEMA–1516–DR), dated May 7, 2004, and related determinations.

DATES: *Effective Date:* May 18, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective May 18, 2004.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–12794 Filed 6–4–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1516–DR]

Arkansas; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Arkansas (FEMA–1516–DR), dated May 7, 2004, and related determinations.

DATES: *Effective Date:* May 21, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Arkansas is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 7, 2004:

Independence County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–12795 Filed 6–4–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1518–DR]

Iowa; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Iowa (FEMA–1518–DR), dated May 25, 2004, and related determinations.

DATES:063 *Effective Date:* May 25, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 25, 2004, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Iowa resulting from severe storms, tornadoes, and flooding on May 19, 2004, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Iowa.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal (Category A) and emergency protective measures (Category B), including direct Federal assistance under the Public Assistance program in the designated areas, and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate subject to completion of Preliminary Damage Assessments. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Thomas Costello, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Iowa to have been affected adversely by this declared major disaster:

Bremer, Buchanan, Butler, Cass, Cerro Gordo, Clayton, Delaware, Fayette, Hancock, Humboldt, Jones, Linn, Mitchell, and Pocahontas Counties for Individual Assistance.

Bremer, Buchanan, Butler, Cass, Cerro Gordo, Clayton, Delaware, Fayette, Hancock, Humboldt, Jones, Linn, Mitchell, and Pocahontas Counties for debris removal (Category A) and emergency protective measures (Category B), including direct Federal assistance under the Public Assistance program.

All counties within the State of Iowa are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–12797 Filed 6–4–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1517–DR]

Nebraska; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Nebraska (FEMA–1517–DR), dated May 25, 2004, and related determinations.

DATES: *Effective Date:* May 25, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 25, 2004, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Nebraska resulting from severe storms, tornadoes, and flooding on May 20, 2004, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Nebraska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal (Category A) and emergency protective measures (Category B) under the Public Assistance program in the designated areas, and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate subject to completion of Preliminary Damage Assessments. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Other Needs Assistance under section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Alexander A.

Wells, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Nebraska to have been affected adversely by this declared major disaster:

Cass, Gage, Lancaster, and Saline Counties for Individual Assistance.

Cass, Gage, Lancaster and Saline Counties for debris removal (Category A) and emergency protective measures (Category B) under the Public Assistance program.

All counties within the State of Nebraska are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–12796 Filed 6–4–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for endangered species and/or marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*), and/or the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permit(s) subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in section 2 of the Endangered Species Act of 1973, as amended.

Endangered Species

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
082597	Virginia Polytechnic Institute and State University	69 FR 13324; March 22, 2004	May 13, 2004.
084530	Bruce G. Cowell	69 FR 16285; March 29, 2004	May 17, 2004.

Endangered Marine Mammals and Marine Mammals

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
084463	Jimmie C. Rosenbruch	69 FR 16285; March 29, 2004	May 19, 2004.
084882	Philip J. Guarino, Jr.	69 FR 17440; April 2, 2004	May 18, 2004.

Dated: May 21, 2004.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 04–12734 Filed 6–4–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by July 7, 2004.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (**ADDRESSES** above).

Applicant: Iowa State University, PRT–084859

The applicant requests a permit to import biological samples and discarded shells from wild caught specimens of two species of turtle (*Apalone ater* and *Terrapene coahuila*) from Mexico for scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: Alberto Santos Jr., The Woodlands, TX, PRT–086636

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Richard E. Heckert, Kennett Square, PA, PRT–085827

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Endangered Marine Mammals and Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered marine mammals and/or marine mammals. The applications were submitted to satisfy requirements of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*) and/or the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), and the regulations governing endangered species (50 CFR part 17) and/or marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (**ADDRESSES** above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Robert J. Merkle, El Dorado, AR, PRT–086954

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

Applicant: Kevin M. Libby, Reno, NV, PRT–087507

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Viscount Melville polar bear population in Canada for personal use.

Applicant: Walter O. Kirby, Sacramento, CA, PRT–087684

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

Applicant: Richard R. Childress, Lexington, NC, PRT–087563

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Southern Beaufort polar bear population in Canada for personal use.

Applicant: Raymond K. Yu, Los Angeles, CA, PRT–087181

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

Applicant: Lonnie R. Henriksen, Arlington, SD, PRT–087596

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Southern Beaufort polar bear population in Canada for personal use.

Dated: May 21, 2004.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 04–12735 Filed 6–4–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Operations and Maintenance of the Flathead Indian Irrigation Project Upon Transfer

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of intent and public scoping meeting.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) intends to gather information necessary for preparing an Environmental Impact Statement (EIS) for the proposed operations and maintenance of the Flathead Indian Irrigation project upon transfer. This notice also announces public meetings to determine the scope of issues to be addressed in the EIS.

The purpose of this notice is to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are encouraged.

DATES: Comments on the scope and implementation of this proposal must be received before July 31, 2004. The meeting dates are:

1. June 28, 2004, from 6:30 p.m. to 9 p.m., Arlee, Montana.

2. June 30, 2004, from 6:30 p.m. to 9 p.m., Ronan, Montana.

ADDRESSES: Mail or hand deliver written comments to Mr. Jeffery Loman, Chief, Natural Resources Division, Office of Trust Services, Bureau of Indian Affairs, Mail Stop-3061, 1849 C Street, NW., Washington, DC 20240. You may also fax comments to Chief, Natural Resources, at (202) 219–0006 or (202) 219–1255.

The first meeting will be held at the Confederated Salish and Kootenai Arlee Community Center, Arlee, Montana.

The second meeting will be held at the Ronan High School Gymnasium, Ronan, Montana.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffery Loman, (202) 208–7373.

SUPPLEMENTARY INFORMATION: The Flathead Indian Irrigation Project (Project) is located on the Flathead Indian Reservation in northwestern Montana. The Secretary of the Interior (Secretary) is required to transfer the operations and maintenance of the Project as provided by the 1908 Act of May 29, 1908, Public Law 60–156, 35 Stat. 441 (1908) (the 1908 Act) and the 1948 Act of May 25, 1948, Public Law 80–554, 62 Stat. 269 (1948) (the 1948 Act).

In 1904, the Flathead Indian Allotment Act authorized allotments of land within the Flathead Indian Reservation to members of the Confederated Salish and Kootenai tribes ("tribes") and construction of the Flathead Indian Irrigation Project for "the benefit of Indians" on the Flathead Indian Reservation. 33 Stat. 302. When this Act was amended in 1908, it also authorized the construction of irrigation systems to serve homesteaded lands within the Flathead Indian Reservation and provided for turnover of the operation and maintenance of irrigation works to non-Indian lands served by the Project when certain Project construction repayment conditions had been met. 35 Stat. 450. Further, upon turn over of the project, the 1948 Act called for the operation and

maintenance of the Project under rules and regulations approved by the Secretary.

As of August of 2002, there were 134,788 total acres in the project; 127,535 of which were assessed acres, with 7,252 designated as temporarily non-assessed acres. Approximately 10 percent of the project's irrigated lands are held in trust by the United States for the benefit of individual Indian landowners and for the Confederated Salish and Kootenai tribes. Trust land totals 11,771 acres, while land in fee status totals 115,764 acres. The primary source of the water for the Project originates from the Mission Mountains which border the east side of the reservation. Project facilities include 17 major storage reservoirs, 1,300 miles of canals and laterals and more than 10,000 structures. The project is divided into the Mission, Post, Pablo, Camas, and Jocko divisions. Primary irrigated crops are hay and alfalfa, grains, potatoes, canola, and some fruit orchards.

Currently, the Bureau of Indian Affairs Flathead Agency Superintendent is the Officer in Charge of the Project and administers activities through the Irrigation Systems Manager. The Irrigation Systems Manager supervises the operation and maintenance of the Project works.

Non-Indian irrigation interests are represented by three irrigation districts, the Flathead Irrigation District, the Mission Irrigation District, and the Jocko Valley Irrigation District. These Districts signed repayment contracts with the United States in 1928, 1931, and 1934 respectively, and are collectively represented by the Flathead Joint Board of Control (FJBC), which is chartered under state law and represents only owners of fee lands. Individual Indians and the tribes that irrigate lands held in trust by the United States are statutorily excluded from representation by the FJBC.

Repayment of Project construction conditions were fulfilled in early January 2004. The Bureau of Indian Affairs, the tribes and the FJBC are developing proposed standard operating procedures for the Project and are proposing to contract the management of the Project under a Cooperating Management Entity, made up of representatives from the FJBC and the tribes with BIA providing oversight functions and maintaining its traditional role as trustee.

The Bureau of Indian Affairs has been delegated the responsibility to serve as the Lead Agency for National Environmental Policy Act compliance in connection with the proposed operations and maintenance of the Flathead Indian Irrigation project upon transfer. Issues to be addressed in the environmental analysis include, but are not limited to, irrigation and farming, rights-of-ways, treaty-protected fisheries, aquatic habitat, biological resources, wildlife habitat, and Indian traditional and cultural properties and resources.

Alternatives to the proposed operations and maintenance of the project to be examined in the EIS may include a variety of measures, such as various Project management control structures, certain operating and maintenance methods or procedures, system rehabilitation, and alternative water delivery regimes. The range of environmental issues and alternatives will be further developed based upon comments received during the scoping process.

Authority: This notice is published in accordance with section 1501.7, Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) and the Department of the Interior Manual (516 DM 1.6) and is within in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

Dated: May 27, 2004.

David W. Anderson,

Assistant Secretary—Indian Affairs.

[FR Doc. 04–12814 Filed 6–4–04; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–930–04–1310–MSES 047099]

Proposed Reinstatement of Terminated Oil and Gas Lease, Mississippi

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease, MSES 047099, Forrest County, Desoto N.F., Mississippi, was timely filed and accompanied by all required rentals and royalties. No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rental and royalties at rates of $10 per acre and 16⅔ percent. Payment of $500 in administrative fees and a $155 publication fee has been made.

FOR FURTHER INFORMATION, CONTACT: Ann Dickerson, Land Law Examiner, BLM Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia at (703) 440–1512.

SUPPLEMETARY INFORMATION: The Bureau of Land Management is proposing to reinstate the lease effective the date of termination, May 1, 2002, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above. This is in accordance with section 31(d) and (e) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 199(d) and (e)).

Dated: April 14, 2004.

Michael D. Nedd,

State Director.

[FR Doc. 04–12754 Filed 6–4–04; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–010–1430–ES; NMNM 100202]

Notice of Realty Action; Recreation and Public Purpose (R&PP) Act Classification; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following public lands in Sandoval County, New Mexico have been examined and found suitable for classification for patent to the Cuba Soil and Water Conservation District under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Cuba Soil and Water Conservation District proposes to use the lands for an outdoor classroom and administrative site.

New Mexico Principal Meridian

T. 20 N., R. 1 W., Sec. 5, NW¼SW¼NW¼ and W½NE¼SW¼NW¼

Containing 15.00 acres, more or less.

The lands are not needed for Federal purposes. Patent is consistent with current BLM land use planning and would be in the public interest.

The patent will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. All valid existing rights documented on the official public land records at the time of patent issuance.

5. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Albuquerque Field Office, 435 Montano NE, Albuquerque, New Mexico 87107.

On June 7, 2004, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. Interested persons may submit comments regarding the proposed lease or classification of the lands to the Field Manager, Albuquerque Field Office, 435 Montano NE, Albuquerque, NM 87107 until July 22, 2004.

Classification Comments: Interested parties may submit comments involving the suitability of the land for an outdoor classroom and administrative site. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for an outdoor classroom and administrative site.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective on August 6, 2004.

Edwin J. Singleton,

Field Manager.

[FR Doc. 04–12753 Filed 6–4–04; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–100–04–1990–00]

Temporary Travel Restriction Order, Moffat County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This order limits certain public lands to foot and horse back use in the areas surrounding the Union Cellular communications facility in Browns Park, Moffat County, Colorado. This order modifies the current Off Highway Vehicle (OHV) classification of "open" in this area. The restriction includes an emergency limitation that prohibits the use of any motorized or non-motorized wheeled vehicles within the identified area.

EFFECTIVE DATE: June 7, 2004.

ADDRESSES: Maps of the designated area will be available at the Little Snake Field Office, 455 Emerson Street, Craig, Colorado.

FOR FURTHER INFORMATION CONTACT: John E. Husband, Field Manager, Little Snake Field Office, 455 Emerson Street, Craig, Colorado 81625; Telephone (970) 826–5000.

SUPPLEMENTARY INFORMATION: This order is issued under the authority of 43 CFR 8364.1 and 43 CFR 8341.2(a) as a temporary measure while the off-highway vehicle (OHV) management portion of the Little Snake Field Office Resource Management Plan is reviewed and modified as needed to address public issues, concerns and needs, as well as resource uses, development, impacts, and protection.

This order affects public lands in Moffat County, Colorado thus described:

(1) Public Lands within:

T.9N., R.101W., Sections 18 and 19;
T.9N., R102W., Sections 13, 14, 23, and 24;
Approximately: 582 acres of Public Lands

This restriction order shall be effective May 1, 2004, and shall remain in effect until rescinded or modified by the Authorized Officer.

Current OHV use designation for public land in the area is "open" and was established in the Little Snake Resource Area Management Plan, Record of Decision (ROD) 1989. Increased OHV use in this area and on a prominent mesa top overlook have exposed a significant cultural resource and a Bureau of Land Management Special Status Species, Duchesne Milkvetch (Astragalus duchensensis), Colorado Rare Plant Field Guide, Colorado Natural Heritage Program, 1997, to unacceptable impacts.

The modification of the current OHV use designation is necessary to adequately protect natural resources and cultural resources on public land. This modification is a temporary travel restriction that prohibits the use of motorized and non motorized vehicles in the designated area. These issues will be thoroughly addressed during Land Use Planning for this area to start in 2004.

The designated area affected by this order will be posted with appropriate regulatory signs. Persons who are exempt from the restriction contained in this notice include:

1. Any Federal, State, or local Officers engaged in fire, emergency, and law enforcement activities.

2. Persons or agencies holding a special use permit or right-of-way for access to maintain and operate authorized facilities within the restricted area, for purposes related to access for maintenance and operation of said authorized facilities, and provided such motorized use is limited to the routes specifically identified in the special use permit or right-of-way.

3. Grazing permittees holding a valid grazing permit for the restricted area will contact the Authorized Officer for emergency grazing situations with the exact location of the emergency. The Authorized Officer will issue verbal instructions as needed to avoid the areas of concern within the designated area. All verbal instructions will be followed by the grazing permittee. Sick or injured animal(s) and the recovery of the animal(s) will be completed with as little resource damage as possible. Further, grazing permittees will notify the Authorized Officer, within 10 working days, of such actions in a letter describing the location and reason for the action. BLM mitigative measures related to the plant community and/or cultural resource will be developed to address any damages caused by the emergency situation.

Penalities: Violations of this restriction order are punishable by fines as specified in 43 CFR 8360.0–7 not to exceed $1,000 and/or imprisonment not to exceed 12 months. Further, the Archaeological Resource Protection Act of 1979 and amendments (16 U.S.C. 470) at 470ee and 470ff provide for prohibited acts, Criminal and Civil penalties, respectively.

Authority: 43 CFR 8364.1 and 43 CFR 8341.2(a).

Dated: April 16, 2004.

John E. Husband,

Field Manager, Little Snake Field Office.

[FR Doc. 04–12755 Filed 6–4–04; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–070–04–1232–EA]

Temporary Closure and Restrictions on Use of Public Lands—Recreation Special Events: New Mexico, Farmington Field Office

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice.

SUMMARY: The BLM, Farmington Field Office, announces the temporary closure of selected public lands under its administration in San Juan County. This action is taken to provide for public and participant safety and to protect adjacent natural and cultural resources during the conduct of permitted special recreation events.

The State Director, New Mexico State Office, announces the temporary closure of selected public lands under the BLM administration. This action is taken to provide for public and participant safety and to protect adjacent natural and cultural resources during the conduct of permitted special recreation events.

DATES: This order will become effective on June 7, 2004 and shall be in effect continuously for the next 2 years. At that time, this closure order shall be reviewed and a determination shall be made whether to reinstate, amend, modify, or change the order by similar notification. This closure order may be rescinded at anytime if in the judgment of the authorized officer it is not effective or not needed.

FOR FURTHER INFORMATION CONTACT: Richard Simmons, Outdoor Recreation Planner, Farmington Field Office, Bureau of Land Management, 1235 La Plata Hwy, Suite A, Farmington, New Mexico 87410, telephone number (505) 599–6345.

SUPPLEMENTARY INFORMATION: This notice applies to closures on and adjacent to permitted special events including but not limited to: motorized off-highway-vehicle (OHV) events, mountain-bike races, and horse-endurance competitive event sites and routes. Competitive events are conducted along dirt roads, trails, washes, and areas approved for such use through the Special Recreation Permit application process. Events occur throughout the year. Closure period is from 6 a.m. event day until the event finishes, or until the event has cleared between affected check point locations; approximately 2 to 48-hour periods. The general public will be advised of each event and closure specifics via local newspapers and radio ads within seven (7) to thirty (30) days prior to the running of an event. Event maps and information will be posted at the Farmington Field Office.

Locations most commonly used for permitted events include, but are not limited to:

1. Glade Recreation Area—San Juan Co.: T. 30–31 N., R. 12–13 W.
2. Alien Run Mountain Bike Trail—San Juan Co.: T. 31 N., R. 10 W.
3. The Rock Garden—San Juan Co.: T. 30–31 N., R. 9 W.
4. Piñon Mesa—San Juan Co.: T. 30 N., R. 13–14 W.
5. Navajo Lake Horse Trails—San Juan Co.: T. 30 N., R. 7–8 W.
6. The Dunes OHV Area—San Juan Co.: T. 29 N., R. 13 W.
7. Head Canyon Motocross Track—San Juan Co.: T. 30 N., R. 13 W.
8. Simon Canyon—San Juan Co.: T. 30–31 N., R. 8 W.
9. Angel Peak Recreation Area—San Juan Co.: T. 26–27 N., R. 10 W.

Marking and effect of closure: The BLM lands to be temporarily closed to public use include the width and length of those roads, trails, and routes identified as the route for the permitted event, identified by colored flagging, chalk arrows in the dirt, traffic cones, temporary barricades, and/or directional arrows attached to wooden stakes; vehicle closures for the public in vendor areas and spectator viewing areas, identified with colored ribbon and signs; camping closures, except in such areas designated for camping by the BLM, identified with signs and colored ribbon and/or barricades, gates, cones, and fences; vehicle speeds restricted within the closure area, identified with speed limit signs; alcoholic beverage closure, identified with signs at entrances to the event. The authorized applicants or their representatives are required to post warning signs, control access to, and clearly mark the event routes and area during closure periods.

Public uses generally affected by a Temporary Closure include: road and trail uses, camping, picnicking, alcoholic beverage consumption, parking, cross-country travel, and public-land exploration. Spectator and support vehicles may be driven in designated areas and routes only. Spectators may observe the races from specified locations as directed by event and agency officials.

This closure is an intermittent closure of event sites. Closures would only last for the period of the event. Most would only last one day, the maximum closure would last two days.

You may obtain a map and schedule of each closure area at the contact address.

Exceptions: Closure restrictions do not apply to permittees, their employees, competitors, medical/rescue, law enforcement, oil and gas industry employees doing day-to-day necessary service, and BLM personnel monitoring the event.

Penalty: Any person failing to comply with the closure orders may be subject to imprisonment for not more than 12 months, or a fine in accordance with the applicable provisions of 18 U.S.C. 3571, or both.

Authority: 43 CFR 8364.1 and 43 CFR part 2930.

Dated: March 31, 2004.

Linda S.C. Rundell,

State Director.

[FR Doc. 04–12752 Filed 6–4–04; 8:45 am]

BILLING CODE 1220–PM–P

DEPARTMENT OF THE INTERIOR

[MT–921–2004–1320–EM]

Establishment of Category 5 Royalty Rate at 2.2 Percent in Fort Union Federal Coal Production Region

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice is issued for the purpose of announcing the reassessment of the Category 5 Royalty Rate to 2.2 percent within the Fort Union Federal Coal Producing Region in the Counties of McLean, Mercer, and Oliver, North Dakota, and Richland County, Montana. This reassessment was conducted pursuant to the Bureau of Land Management *Royalty Reduction Guidelines for Coal and Solid Leasable Minerals* which requires a periodic review of the prevailing non-Federal royalty rate in the producing region.

DATES: Effective Date: June 7, 2004.

FOR FURTHER INFORMATION CONTACT: Randy D. Heuscher, Chief, Branch of Solid Minerals, telephone (406) 896–5118, Montana State Office, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107–6800.

SUPPLEMENTARY INFORMATION: Section 2505 of the Energy Policy Act of 1992 afforded royalty relief in the Fort Union Coal region for coal lease applicants, for lessees with royalty reductions approved after March 29, 1990, and for lessees whose royalty reduction applications are approved in the future.

Section 39 of the Mineral Leasing Act of 1920, as amended and supplemented,

authorizes the Secretary of Interior to reduce royalty rates to a rate lower than the legal minimum for Federal minerals. This authority to reduce the royalty rate for coal leases is defined in 43 CFR 3485.2(c)(1). The purpose of a royalty reduction must be to encourage the greatest ultimate recovery of Federal coal and to conserve the resource; *i.e.*, to prevent Federal coal from being bypassed. Royalty reduction is warranted when it is necessary to promote development or if the Federal lease cannot be successfully operated under the terms of the lease.

The "Fort Union Category 5 Royalty Rate Reduction Study" requested by the State Director, Montana State Office, Bureau of Land Management, was completed by the Northwest Regional Evaluation Team of the Bureau of Land Management of the Department of Interior in 1991. The 1991 study recommended that a Category 5 Royalty Rate Reduction be granted for the Fort Union Coal Region. The study determined that all five (5) criteria for a Category 5 reduction were met. Based on royalty rate information at that time, the study recommended that the Federal royalty rate be set at 2.0 percent. The rate took effect on applications filed, beginning in 1992.

The BLM *Royalty Reduction Guidelines for Coal and Solid Leasable Minerals* require that a review of the competitive non-Federal coal royalty rate, within the Qualified Geographic Area, be completed every 2 years in order to determine if the rate is still appropriate. Subsequent review studies, by the Bureau of Land Management, Montana State Office, determined that the prevailing rates remained at 2.0 percent from 1991 through 1996; increased to 2.6 percent from 1997 through 2000; and decreased to 2.4 percent from 2001 through 2003. The most recent study, completed in March 2004, is the basis for the following determinations.

A. *Geographic Area Qualification*—The Counties of McLean, Mercer, and Oliver, North Dakota, and Richland County, Montana, continue to meet the established five (5) criteria to qualify under Category 5 for royalty rate differentials as follows: (1) The Federal Government is not market dominant in this area; (2) Federal royalty rates are above the current market royalty rate for non-Federal rates in the area; (3) Based on a mine-by-mine examination, it is apparent that there are instances where Federal coal can be expected to be bypassed in the near future due to the royalty rate differential between Federal and non-Federal coal; (4) All three (3) previous criteria considerations have been found to exist throughout the region; and (5) A Category 5 Royalty Rate Reduction is not likely to result in undue competitive advantages over neighboring areas.

B. *Establishment of Competitive Royalty Rates*—The competitive royalty rate of 2.2 percent is established to promote development of Federal coal reserves situated in the Counties of McLean, Mercer, and Oliver, North Dakota, and Richland County, Montana, that may otherwise be bypassed in favor of non-Federal coal having a lower royalty rate.

C. *Category 5 Reduction in Royalty Applications*—Federal lease-specific applications for Category 5 Reduction in Royalty for Coal deposits within the Counties in North Dakota and Montana named above will be accepted by the Montana State Office, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107–6800. The Category 5 Royalty Rate of 2.2 percent will be effective upon publication of this notice. Applications will be processed pursuant to the regulations at 43 CFR part 3485 as established by the "Royalty Rate Reduction Guidelines for the Solid Leasable Minerals."

The geographic area qualification and the establishment of the competitive royalty rate under Category 5 of the "Royalty Rate Reduction Guidelines for the Solid Leasable Minerals" will be reviewed again and updated 2 years from the effective date hereof.

Dated: May 11, 2004.

Randy D. Heuscher,

Chief, Branch of Solid Minerals.

[FR Doc. 04–12751 Filed 6–4–04; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–957–04–1420–BJ]

Notice of Filing of Plats of Survey, Wyoming

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The Bureau of Land Management (BLM) has filed the plats of survey of the lands described below in the BLM Wyoming State Office, Cheyenne, Wyoming, on May 28, 2004.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the Bureau of Land Management, and are necessary for the management of resources. The lands surveyed are:

The plat and field notes representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 10, Township 14 North, Range 106 West, Sixth Principal Meridian, Wyoming, was accepted May 28, 2004.

The plat and field notes representing the dependent resurvey of the Seventh Standard Parallel North, through Range 108 West, the Thirteenth Auxiliary Guide Meridian West, through Township 29 North, between Ranges 108 and 109 West, the east and north boundaries and subdivisional lines, Township 29 North, Range 108 West, Sixth Principal Meridian, Wyoming, was accepted May 28, 2004.

Copies of the preceding described plats and field notes are available to the public at a cost of $1.10 per page.

Dated: June 1, 2004.

John P. Lee,

Chief Cadastral Surveyor, Division of Support Services.

[FR Doc. 04–12782 Filed 6–4–04; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of the Draft Environmental Impact Statement for the General Management Plan, Chattahoochee River National Recreation Area, GA

ACTION: Notice.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(c), the National Park Service announces the availability of a draft Environmental Impact Statement and General Management Plan (DEIS/GMP) for the Chattahoochee River National Recreation Area, Georgia. This notice is being published in accordance with 40 CFR 1506.6.

The DEIS/GMP evaluates four alternatives for the park. The document describes and analyzes the environmental impacts of three action alternatives and a no-action action alternative. The no-action alternative would continue current management practices into the future. When approved, the plan will guide management actions during the next 15–20 years.

DATES: The National Park Service will accept comments from the public on the draft General Management Plan/ Environmental Impact Statement for 60

days after publication of this notice. Public meetings have not been scheduled at this time but are anticipated to be conducted at various locations in the vicinity of the National Recreational Area during late spring of 2004. Public notice of the specific dates, times, and locations of the meetings will be provided in a newsletter, announced in local media, and posted on the Internet at *http://www.nps.gov/chat/pphtml/news.html*. Representatives of the National Park Service will be available at the public meeting to receive comments, concerns, and other input from the public related to the DEIS/GMP.

ADDRESSES: Copies of the DEIS/GMP are available from the Superintendent, Kevin Cheri, Chattahoochee River National Recreation Area, 1978 Island Ford Parkway, Atlanta, Georgia 30350–3400. Public reading copies of the DEIS/GMP will also be available for review at the following locations:

- Office of the Superintendent, Chattahoochee River National Recreation Area, 1978 Island Ford Parkway, Atlanta, Georgia 30350–3400. Telephone: 678–538–1210.
- Division of Planning and Compliance, Southeast Regional Office, National Park Service, Attention: David Libman, 100 Alabama Street, 1924 Building, Atlanta, Georgia 30303. Telephone: 404–562–3124, ext. 685.
- An electronic copy of DEIS/GMP is available for download in .pdf format on the Internet at *http://planning.nps.gov/plans.cfm* under the Chattahoochee River National Recreation Area section.

FOR FURTHER INFORMATION CONTACT: Kevin Cheri, Superintendent, Chattahoochee River National Recreation Area, 1978 Island Ford Parkway, Atlanta, Georgia 30350–3400. Telephone: 678–538–1210.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Chattahoochee River National Recreation Area, Superintendent, 1978 Island Ford Parkway, Atlanta, GA 30350–3400.

You may also comment via the Internet by going to the Chattahoochee River NRA Web site at *http://www.nps.gov/chat* and selecting the "Contact Us" link. Please submit Internet comments as a plain text file avoiding the use of special characters and any form of encryption. Please also include "Attn: General Management Plan Team" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact the park directly at Chattahoochee River National Recreation Area, Phone 678–538–1210. Finally, you may hand-deliver comments to the Superintendent, Chattahoochee River NRA at 1978 Island Ford Parkway, Atlanta, GA 30350–3400.

Please note that names and addresses of people who comment become part of the public record. Anonymous comments will not be considered. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

The responsible official for this Environmental Impact Statement is Patricia A. Hooks, Regional Director, Southeast Region, National Park Service, 100 Alabama Street, SW., 1924 Building, Atlanta, Georgia 30303.

Dated: April 12, 2004.

Patricia A. Hooks,

Regional Director, Southeast Region.

[FR Doc. 04–12743 Filed 6–4–04; 8:45 am]

BILLING CODE 4312–52–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Denver Museum of Nature &Science, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Denver Museum of Nature & Science, Denver, CO. The human remains were removed from the Native Village of Kivalina, near Point Hope, AK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the Denver Museum of Nature & Science professional staff in consultation with the Native Village of Kivalina.

In 1921, human remains representing one individual were removed from the Native Village of Kivalina, near Point Hope, AK, by Dr. A.M. Bailey during a museum-sponsored biological field expedition to Alaska. According to Dr. Bailey's field notes, the human remains were recovered "off the ground surface in the village of Kivalina in the lee of Point Hope, Alaska." No further information is recorded. The human remains were accessioned into the collection in 1921. No known individual was identified. No associated funerary objects are present.

Provenience information in museum records and consultation with the Native Village of Kivalina indicate that the human remains are those of a Native American who was an earlier inhabitant of the village.

Officials of the Denver Museum of Nature & Science have determined that, pursuant to 25 U.S.C. 3001, (9–10), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Denver Museum of Nature & Science also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Native Village of Kivalina.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Ella Maria Ray, NAGPRA Officer, Department of Anthropology, Denver Museum of Nature & Science, 2001 Colorado Boulevard, Denver, CO 80205, telephone (303) 370–6056, before July 7, 2004. Repatriation of the human remains to the Native Village of Kivalina may proceed after that date if no additional claimants come forward.

The Denver Museum of Nature & Science is responsible for notifying the Native Village of Kivalina that this notice has been published.

Dated: April 23, 2004.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 04–12660 Filed 6–4–04; 8:45 am]

BILLING CODE 4310–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Denver Museum of Nature & Science, Denver, CO

AGENCY: National Park Service, Interior.
ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Denver Museum of Nature & Science, Denver, CO. The human remains were removed from an unknown location in Florida.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the Denver Museum of Nature & Science professional staff in consultation with representatives of the Miccosukee Tribe of Indians of Florida; Seminole Nation of Oklahoma; and Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations.

Between 1910 and 1911, human remains representing a minimum of one individual were removed from an unknown location in Florida. Sometime between 1910 and 1911, the human remains came into the possession of Jesse H. Bratley. After Mr. Bratley's death in 1948, the human remains came into the possession of Mr. Bratley's daughter, Hazel Bratley. In 1961, Mary W.A. Crane and Francis V. Crane purchased the human remains from Ms. Bratley. In 1983, the Cranes donated the human remains to the museum, and the museum accessioned the human remains into the collection in the same year. No known individual was identified. No associated funerary objects are present.

Based on provenience, museum records, research, and consultations with the Seminole Nation of Oklahoma; and Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations, the human remains are determined to be Native American of Seminole ancestry. Mr. Bratley resided in Homestead, FL, in 1910 and moved to Miami, FL, in 1911. During this time, Mr. Bratley photographed Seminole people. His records mentioned that he acquired "sacral & pubic bones and some smaller ones," and recorded the culture of the human remains as "Seminole." Historical and archeological evidence establish that Seminole and Miccosukee people have been residents in central and southern Florida for several hundred years. In consultations, Seminole delegates confirmed their affiliation with earlier historic American Indians in Florida and indicated that the individual is probably one of their ancestors. The Miccosukee Tribe of Indians of Florida were consulted and requested that the human remains be reburied in Florida but did not indicate a direct cultural affiliation with the human remains.

Officials of the Denver Museum of Nature & Science have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains listed above represent the physical remains of a minimum of one individual of Native American ancestry. Officials of the Denver Museum of Nature & Science also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Seminole Nation of Oklahoma and Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Ella Maria Ray, NAGPRA Officer, Department of Anthropology, Denver Museum of Nature & Science, 2001 Colorado Boulevard, Denver, CO 80205, telephone (303) 370–6056, before July 7, 2004. Repatriation of the human remains to the Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations and Seminole Nation of Oklahoma may proceed after that date if no additional claimants come forward.

The Denver Museum of Nature & Science is responsible for notifying the Miccosukee Tribe of Indians of Florida; Seminole Nation of Oklahoma; and Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations that this notice has been published.

Dated: April 23, 2004.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 04–12661 Filed 6–4–04; 8:45 am]

BILLING CODE 4310–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: U.S. Department of the Interior, National Park Service, Salinas Pueblo Missions National Monument, Mountainair, NM

AGENCY: National Park Service, Interior.
ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of U.S. Department of the Interior, National Park Service, Salinas Pueblo Missions National Monument, Mountainair, NM, that meet the definition of "unassociated funerary objects" under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the superintendent, Salinas Pueblo Missions National Monument.

The 349 items are 1 antler artifact, 1 axe, 2 awls, 89 individual and 1 box of beads, 1 biface, 2 faunal bone artifacts, 7 individual and 10 bags of unworked faunal bone, 4 ceramic bowls, 3 pieces of charcoal, 12 concretions, 1 segment of cordage, 58 bags of corn kernels, 1 corn plant, 8 corn cobs, 25 crystals, 1 stone disk, 1 drill, 13 effigies, 1 fetish, 1 ceramic jar, 1 mano, 15 pendants, 5 pieces and 3 bags of pigment, 5 pipes, 1 pitcher, 13 polishing stones, 7 projectile points, 1 shaft straightener, 2 pieces of worked and 1 piece of unworked shell, 5 pieces and 8 bags of sherds, 16 unworked stones, 14 textile pieces, 1 tinkler, and 8 tubes.

In 1941, one ceramic bowl was recovered during legally authorized excavations conducted by Washington & Jefferson College at site LA 83, named Pueblo Pardo Ruin or Grey Town, as part of a field school program. Pueblo Pardo Ruin is located in Socorro County, NM, and, based on material culture and architectural features, dates to the Pueblo III and Pueblo IV periods (A.D. 1300 to 1630). Due to the proximity (3 miles south) and contemporaneous habitation of Pueblo Pardo Ruin with the pueblos of the Gran Quivira area, the college donated the ceramic bowl to the monument in 1942. Records indicate that the bowl was recovered from a burial and that the human remains were not collected.

Between 1965 and 1967, the other 348 cultural items described above were

recovered during legally authorized National Park Service excavations at Mound 7 of the Pueblo de Las Humanas complex in Torrance and Soccoro Counties, NM, a site located within the boundaries of the monument's Gran Quivira unit. Records indicate that the objects were recovered from burials (primarily cremations) but that the associated human remains either were not collected or were not retained. Based on material culture and architectural features, Mound 7 dates from the Pueblo IV period (A.D. 1300 to 1672).

Salinas Pueblo Missions National Monument professional staff have reviewed the archeological and ethnographic literature and a cultural affiliation study by the National Park Service, and have consulted with the Caddo Nation of Oklahoma; Hopi Tribe of Arizona; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Pueblo of Acoma, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma; Ysleta del Sur Pueblo of Texas; Zuni Tribe of the Zuni Reservation, New Mexico; and Piro-Manso-Tiwa Indian Tribe (a nonfederally recognized Indian group). All of the New Mexico tribes and pueblos were invited to participate in consultation. The Navajo Nation, Arizona, New Mexico & Utah requested all of the mailings but did not participate in the consultation meetings. As part of the consultation process, the Hopi Tribe of Arizona and the Zuni Tribe of the Zuni Reservation, New Mexico submitted cultural affiliation statements claiming ancestry with the Mogollon and Anasazi cultures.

The prehistoric Pueblo culture of the Gran Quivira area during the Basketmaker III through the Spanish Contact periods (A.D. 500 to 1672) has been termed Jumano by anthropologists. Located in what is now central New Mexico, the Jumano culture was similar to the Rio Grande Anasazi culture as evidenced by the presence of masonry pueblos, ceremonial kivas, black and white pottery, and agriculture. The pueblo-dwelling Jumano were also influenced by the Mogollon culture as reflected in the use of brown utility ware pottery and Mogollon settlement patterns. Just prior to the Pueblo Revolt of 1680, the region, including the Jumano Pueblos of Las Humanas and Pueblo Pardo, was abandoned due to drought, famine, and increased raiding by Plains and Athabascan groups. Historic Spanish records document the depopulation of the area and the movement of the people to the pueblos of the Rio Grande valley and to the El Paso-Juarez area.

Officials of Salinas Pueblo Missions National Monument have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of Native American individuals. Officials of Salinas Pueblo Missions National Monument also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the 349 unassociated funerary objects and the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Ysleta del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico. In addition, officials of Salinas Pueblo Missions National Monument have determined that a cultural relationship exists between the unassociated funerary objects and the Piro-Manso-Tiwa Indian Tribe (a nonfederally recognized Indian group).

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Glenn M. Fulfer, Superintendent, Salinas Pueblo Missions National Monument, P.O. Box 517, Mountainair, NM 87036, telephone (505) 847–2585, extension 25, before July 7, 2004. Repatriation of the unassociated funerary objects to the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Ysleta del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico may proceed after that date if no additional claimants come forward.

Salinas Pueblo Missions National Monument is responsible for notifying the Caddo Nation of Oklahoma; Hopi Tribe of Arizona; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Pueblo of Acoma, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma; Ysleta del Sur Pueblo of Texas; Zuni Tribe of the Zuni Reservation, New Mexico; and Piro-Manso-Tiwa Indian Tribe (a nonfederally recognized Indian group) that this notice has been published.

Date: April 2, 2004.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 04–12663 Filed 6–4–04; 8:45 am]

BILLING CODE 4310–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item: San Diego Archaeological Center, San Diego, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.8 (f), of the intent to repatriate a cultural item in the possession of the San Diego Archaeological Center, San Diego, CA, that meets the definition of sacred objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.8 (f). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural item. The National Park Service is not responsible for the determinations within this notice.

The one cultural item is a ceramic pipe fragment excavated from an archeological site in San Diego County, CA.

The ceramic pipe fragment was excavated in 1977–78 from site CA-SDI–675, which is west of Highway 76 near Monserate Road in northern San Diego County, CA, by Archaeological Consulting Technology, Inc. (ACT), as part of a development project. The collection of archeological materials from site CA-SDI–675 was brought to the San Diego Archaeological Center on October 21, 1998, for curation. During collection preparation, the ceramic pipe fragment was identified as the only item in the site CA-SDI–675 collection subject to repatriation under NAGPRA.

Archeological evidence, including artifacts typical of the late Prehistoric period (1500 B.C. to circa A.D. 1700), indicates that the site described above is Native American. The sacred nature of the cultural item is indicated by archeological and historical literature, as well as oral historical evidence presented during consultation. Ceramic pipes are used in sacred ceremonies by the Luiseno Indians. Archeological and historical literature and oral historical evidence also confirms that the site lies within traditional and historical Luiseno territory.

Officials of the San Diego Archaeological Center have determined that, pursuant to 25 U.S.C. 3001 (3)(C), the cultural item is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the San Diego Archaeological Center also have determined that, pursuant to 25 U.S.C. 3001, there is a relationship of shared group identity that can be reasonably traced between the sacred object and the La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California; Pala Band of Luiseno Mission Indians of the Pala Reservation, California; Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California; Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California; Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California; Soboba Band of Luiseno Indians, California; and Twenty-Nine Palms Band of Mission Indians of California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred object should contact Cindy Stankowski, Director, San Diego Archaeological Center, 16666 San Pasqual Valley Road, Escondido, CA 92027, before July 7, 2004. Repatriation of the sacred object to the La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California; Pala Band of Luiseno Mission Indians of the Pala Reservation, California; Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California; Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California; Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California; Soboba Band of Luiseno Indians, California; and Twenty-Nine Palms Band of Mission Indians of California may proceed after that date if no additional claimants come forward.

The San Diego Archaeological Center is responsible for notifying the La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California; Pala Band of Luiseno Mission Indians of the Pala Reservation, California; Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California; Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California; Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California; San Luis Rey Band of Mission Indians (a nonfederally recognized Indian group); Soboba Band of Luiseno Indians, California; and Twenty-Nine Palms Band of Mission Indians of California that this notice has been published.

Dated: April 5, 2004.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 04–12662 Filed 6–4–04; 8:45 am]

BILLING CODE 4310–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: San Diego Archaeological Center, San Diego, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of San Diego Archaeological Center, San Diego, CA. The human remains were removed from an archeological site in San Diego County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by San Diego Archaeological Center professional staff with representatives of the La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California; Pala Band of Luiseno Mission Indians of the Pala Reservation, California; Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California; Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California; Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California; San Luis Rey Band of Mission Indians (a nonfederally recognized Indian group); Soboba Band of Luiseno Indians, California; and Twenty-Nine Palms Band of Mission Indians of California.

In 1990, human remains representing a minimum of one individual were removed from site CA-SDI–5445 in Oceanside, northern San Diego County, CA, 2 miles east of the Pacific Ocean and one mile west of the San Luis Rey Mission. Site CA-SDI–5445 was excavated by California Department of Transportation (Caltrans) for construction of State Route 76. The site records do not mention discovery of human remains. The collection of archeological materials from site CA-SDI–5445 was brought to San Diego Archaeological Center on August 8, 2000, for curation. The human remains were identified while preparing the collection for curation and were confirmed to be Native American by Rose Tyson, curator at the San Diego Museum of Man, San Diego, CA. No other items subject to NAGPRA were found in the collection. No known individual was identified. No associated funerary objects are present.

Archeological evidence, including artifacts typical of the late Prehistoric period (1500 B.C. to circa A.D. 1700), indicates that the site described above is Native American. All of the human remains are fragmentary and some show evidence of cremation, which was typical of burial practices in the late Prehistoric period. It is likely that the individual was interred prior to European contact. The archeological and historical literature and tribal evidence confirm that the site lies within traditional and historical Luiseno territory.

Officials of the San Diego Archaeological Center have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the San Diego Archaeological Center also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California; Pala Band of Luiseno Mission Indians of the Pala Reservation, California; Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California; Pechanga Band of Luiseno Mission

Indians of the Pechanga Reservation, California; Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California; Soboba Band of Luiseno Indians, California; and Twenty-Nine Palms Band of Mission Indians of California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Cindy Stankowski, Director, San Diego Archaeological Center, 16666 San Pasqual Valley Road, Escondido, CA 92027, telephone (760) 291–0370, before July 7, 2004. Repatriation of the human remains to the La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California; Pala Band of Luiseno Mission Indians of the Pala Reservation, California; Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California; Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California; Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California; Soboba Band of Luiseno Indians, California; and Twenty-Nine Palms Band of Mission Indians of California may proceed after that date if no additional claimants come forward.

The San Diego Archaeological Center is responsible for notifying the La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California; Pala Band of Luiseno Mission Indians of the Pala Reservation, California; Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California; Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California; Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California; San Luis Rey Band of Mission Indians (a nonfederally recognized Indian group); Soboba Band of Luiseno Indians, California; and Twenty-Nine Palms Band of Mission Indians of California that this notice has been published.

Dated: April 5, 2004.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 04–12744 Filed 6–4–04; 8:45 am]

BILLING CODE 4310–50–S

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–509]

Certain Personal Computers, Server Computers, and Components Thereof; Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on May 6, 2004 under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Hewlett-Packard Development Company, L.P. of Houston, Texas and Hewlett-Packard Company of Palo Alto, California. Supplements to the complaint were filed on May 26 and May 27, 2004. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain personal computers, server computers, and components thereof by reason of infringement of claims 1, 2, 9, 10, 16–18, and 24 of U.S. Patent No. 5,185,691, claims 1, 2, 7, 8, 10, 11, 14, 18, and 22 of U.S. Patent No. 5,258,888, claim 1 of U.S. Patent No. 5,727,213, claims 1, 6–8, and 30–32 of U.S. Patent No. 6,085,318, claim 1 of U.S. Patent No. 5,737,604, claims 1, 2, 3, 5, and 8–10 of U.S. Patent No. 5,892,976, and claims 1, 3, 4, 6–8, 18, 20, 21, 23–25, 35, 37, 38, and 40–42 of U.S. Patent No. 6,138,184. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a permanent limited exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint and supplements, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Anne Goalwin, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2574.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2003).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on June 1, 2004, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain personal computers, server computers, and components thereof by reason of infringement of claims 1, 2, 9, 10, 16–18, or 24 of U.S. Patent No. 5,185,691, claims 1, 2, 7, 8, 10, 11, 14, 18, or 22 of U.S. Patent No. 5,258,888, claim 1 of U.S. Patent No. 5,727,213, claims 1, 6–8, 30, 31, or 32 of U.S. Patent No. 6,085,318, claim 1 of U.S. Patent No. 5,737,604, claims 1, 2, 3, 5, 8, 9, or 10 of U.S. Patent No. 5,892,976, or claims 1, 3, 4, 6–8, 18, 20, 21, 23–25, 35, 37, 38, 40, 41, or 42 of U.S. Patent No . 6,138,184, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

Hewlett-Packard Development Company, L.P., 20555 State Highway .249, Houston, Texas 77070.

Hewlett-Packard Company, 3000 Hanover Street, Palo Alto, California 94304–1105.

(b) The respondent is the following company alleged to be in violation of section 337, and is the party upon which the complaint is to be served:

Gateway, Inc., 14303 Gateway Place, Poway; California 92064.

(c) Anne Goalwin, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401–P, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Delbert R. Terrill, Jr. is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be

submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: June 1, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–12760 Filed 6–4–04; 8:45 am]

BILLING CODE 7020–02–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (04–074)]

Notice of Prospective License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective license.

SUMMARY: NASA hereby gives notice that Bectrasys Corporation, of 10700 SW. 88 Street, Suite 300, Miami, Florida 33176, has applied for an exclusive copyright license to practice computer software entitled "Postdoc Software," disclosed in NASA Case No. ARC–15008–1, which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to NASA Ames Research Center. NASA has not yet made a determination to grant the requested license and may deny the requested license even if no objections are submitted within the comment period.

DATES: Responses to this notice must be received by June 22, 2004.

FOR FURTHER INFORMATION CONTACT: NASA Ames Research Center, Attn: Robert M. Padilla, Chief Patent Counsel, Mail Stop 202A–4, Moffett Field, CA 94035–1000, (650) 604–0887.

Dated: May 27, 2004.

Keith T. Sefton,

Chief of Staff, Office of the General Counsel.

[FR Doc. 04–12721 Filed 6–4–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 04–072]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that PAC Materials, L.L.C., of Huntsville, Alabama, has applied for an exclusive license to practice the invention entitled "High-Strength Aluminum Alloy for High Temperature Applications," in the People's Republic of China, PCT Foreign Application Serial No. PCT/US/03/10372, assigned to the United States of America as represented by the respective Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to James J. McGroary, Chief Patent Counsel/LS01, Marshall Space Flight Center, Huntsville, AL 35812. NASA has not yet made a determination to grant the requested license and may deny the requested license even if no objections are submitted within the comment period.

DATES: Responses to this notice must be received by June 22, 2004.

FOR FURTHER INFORMATION CONTACT: Sammy A. Nabors, Technology Transfer Department/CD30, Marshall Space Flight Center, Huntsville, AL 35812, (256) 544–5226.

Dated: May 27, 2004.

Keith T. Sefton,

Chief of Staff, Office of the General Counsel.

[FR Doc. 04–12719 Filed 6–4–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 04–073]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that the Spartan Light Metal Products, L.L.C., of St. Louis, Missouri, has applied for a partially exclusive license to practice the inventions entitled "Aluminum Alloy And Article Cast Therefrom," U.S. Patent No. 6,592,687, and "Process For Producing A Cast Article From A Hypereutectic Aluminum-Silicon Alloy," U.S. Patent No. 6,669,792, and assigned to the United States of America as represented by the respective Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Mr. James J. McGroary, Chief Patent Counsel/LS01, Marshall Space Flight Center, Huntsville, AL 35812. NASA has not yet made a determination to grant the requested license and may deny the requested license even if no objections are submitted within the comment period.

DATES: Responses to this notice must be received by June 22, 2004.

FOR FURTHER INFORMATION CONTACT: Sammy A. Nabors, Technology Transfer Department/CD30, Marshall Space Flight Center, Huntsville, AL 35812, (256) 544–5226.

Dated: May 27, 2004.

Keith T. Sefton,

Chief of Staff, Office of the General Counsel.

[FR Doc. 04–12720 Filed 6–4–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meetings (Teleconference)

TIME AND DATE: 2 p.m., June 7, 2004.

PLACE: National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC.

STATUS: This meeting (teleconference) will be open to the public.

MATTERS TO BE CONSIDERED: Priorities for NCD's FY2006 Budget Request. In calling the meeting, NCD determined that NCD business required its consideration of the agenda items on less than seven days' notice to the public; that no earlier notice of the

meeting was practicable; and that the involved matters are primarily predecisional information gathering activity.

FOR FURTHER INFORMATION CONTACT: Mark S. Quigley, Director of Communications, National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC 20004; 202–272–2004 (Voice), 202–272–2074 (TTY), 202–272–2022 (Fax), *mquigley@ncd.gov* (E-mail).

AGENCY MISSION: The National Council on Disability (NCD) is an independent federal agency composed of 15 members appointed by the President and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, including people from culturally diverse backgrounds, regardless of the nature or significance of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

ACCOMMODATIONS: Those needing sign language interpreters or other disability accommodations should notify NCD before this meeting.

LANGUAGE TRANSLATION: In accordance with E.O. 13166, Improving Access to Services for Persons with Limited English Proficiency, those people with disabilities who are limited English proficient and seek translation services for this meeting should notify NCD before this meeting.

Dated: June 2, 2004.

Ethel D. Briggs,

Executive Director.

[FR Doc. 04–12851 Filed 6–2–04; 4:33 pm]

BILLING CODE 6820–MA–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; Generic Survey Clearance for the Directorate of Education and Human Resources (EHR)

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request renewed clearance of this collection. In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be received by August 6, 2004 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22030, or by e-mail to *splimpto@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 292–7556 or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title of Collection: EHR Generic Clearance.

OMB Approval Number: 3145–0136.

Expiration Date of Approval: November 30, 2004.

Proposed Renewal Project: The EHR Generic Clearance was established in 1995 to integrate management, monitoring and evaluation information pertaining to the NSF's Education and Training (E&T) portfolio. Under a generic survey clearance (OMB 3145–0136) data from the NSF administrative databases are incorporated and additional information is available through initiative-, divisional-, and program-specific data collections.

Use of the Information: This information is required for effective administration, program monitoring and evaluation, and for measuring attainment of NSF's program goals, as required by the Government Performance and Results Act (GPRA) of 1993 and the President's Management 2003 agenda as represented by the Office of Management and Budget's (OMB) Program Assessment Rating Tool (PART).

Burden of the Public: The total estimate for this collection is 50,000 annual burden hours. This figure is based on the previous 3 years of collecting information under this clearance and anticipated collections. The average annual reporting burden is between .5 and 50 hours per 'respondent' depending on whether a respondent is self-reporting or representing a project and reporting on behalf of groups of individuals.

Dated: June 2, 2004.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 04–12815 Filed 6–4–04; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:*

NRC Form 4, "Cumulative Occupational Dose History."

NRC Form 5, "Occupational Exposure Record for a Monitoring Period."

2. *Current OMB approval number:*

NRC Form 4: 3150–0005.

NRC Form 5: 3150–0006.

3. *How often the collection is required:*

NRC Form 4: Occasionally.

NRC Form 5: Annually.

4. *Who is required or asked to report:*

NRC licensees who are required to comply with 10 CFR Part 20.

5. *The number of annual respondents:*

NRC Form 4: 239 (104 reactor sites and 135 materials licensees).

NRC Form 5: 4,602 (104 reactor sites and 4,498 materials licensees) are

required to keep records; 239 (104 reactor sites and 135 materials licensees are required to submit reports in accordance with10 CFR 20.2206(a).

6. *The number of hours needed annually to complete the requirement or request:*

NRC Form 4: 12,176 hours or an average of 0.5 hours per response.

NRC Form 5: 67,460 hours (57,900 hours for recordkeeping or an average of 13 hours per recordkeeper and 9,560 hours for reporting or an average of 40 hours per licensee).

7. *Abstract:*

NRC Form 4 is used to record the summary of an individual's cumulative occupational radiation dose up to and including the current year to ensure that the dose does not exceed regulatory limits.

NRC Form 5 is used to record and report the results of individual monitoring for occupational radiation exposure during a one-year (calendar year) period to ensure regulatory compliance with annual radiation dose limits.

Submit, by August 6, 2004, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–5 F52, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail to *infocollects@nrc.gov.*

Dated at Rockville, Maryland, this 1st day of June 2004.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 04–12747 Filed 6–4–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No's. 50–413–OLA, 50–414–OLA, ASLBP No. 03–815–03–OLA]

Atomic Safety and Licensing Board; Duke Energy Corporation (Catawba Nuclear Station, Units 1 and 2); Amended, Notice of Evidentiary Hearing and Opportunity To Make Limited Appearance Statements

May 28, 2004.

Before Administrative Judges: Ann Marshall Young, Chair, Anthony J. Baratta, Thomas S. Elleman.

This Atomic Safety and Licensing Board hereby provides this amended notice of hearing, revising its earlier May 20, 2004, Notice of Hearing. *See* 69 FR 29,982 (May 26, 2004). The Board will still, in accordance with 10 CFR 2.715(a), entertain oral limited appearance statements from members of the public, as specified in Section A below, in afternoon and evening sessions on *June 15, 2004, from 3:30 to 5:30 p.m. and 7 to 9 p.m.*, respectively, in Charlotte, North Carolina. The evidentiary hearing previously scheduled to commence on June 15, 2004, in Charlotte is, however, as specified in Section D below, rescheduled now to commence on *July 14, 2004*, at the NRC Offices in Rockville, Maryland, where the Board will receive testimony and exhibits and allow the cross-examination of witnesses on certain matters at issue in this proceeding. This rescheduling was requested by Intervenor Blue Ridge Environmental Defense League (BREDL), with the agreement of Duke Energy Corporation (Duke) and the NRC Staff, because of the unavoidable and extreme circumstance of the unavailability of BREDL's expert to prepare for the June hearing dates due to family health issues.

As previously noted, this proceeding involves certain challenges of BREDL to Duke's request to amend the operating license for its Catawba Nuclear Station to allow the use of four mixed oxide (MOX) lead test assemblies at the station. (MOX fuel contains a mixture of plutonium and uranium oxides, with plutonium providing the primary fissile isotopes; Duke has submitted its request as part of the ongoing U.S.-Russian Federation plutonium disposition program, a nuclear nonproliferation program to dispose of surplus plutonium from nuclear weapons by converting the material into MOX fuel and using that fuel in nuclear reactors.) On September 17, 2003, this Licensing Board was established to preside over this proceeding. 68 FR 55,414 (Sept. 25, 2003). By Memoranda and Orders dated March 5 and April 12, 2004 (the latter sealed as Safeguards !nformation; redacted version issued May 28, 2004), the Licensing Board granted BREDL's request for hearing and admitted various non-security-related and security-related contentions. LBP–04–04, 59 NRC__(2004); LBP–04–10, 59 NRC__(2004). At the July evidentiary hearing, the Board will receive evidence on BREDL's non-security-related Contention I, challenging the adequacy of certain aspects of Duke's license amendment request relating to asserted differences in the behavior of MOX fuel and typical low enriched uranium fuel and the impact of those differences on accident scenario analyses for the Catawba plant.

A. Participation Guidelines for Limited Appearance Session

On *June 15, 2004, in two sessions, from 3:30 to 5:30 p.m. and 7 to 9 p.m., respectively, in a portion of the Grand Ballroom (lobby level) of the Omni Charlotte Hotel (132 East Trade Street),* any persons who are not parties to the proceeding will be permitted to make oral statements setting forth their positions on matters of concern relating to this proceeding. Although these statements do not constitute testimony or evidence, they may nonetheless help the Board and/or the parties in their consideration of the issues in this proceeding.

The time allotted for each statement will normally be no more than five minutes, but may be further limited depending on the number of written requests to make oral statements that are submitted in accordance with Section C below, and/or on the number of persons present the evening of June 15, 2004. Persons who submit timely written requests to make oral statements will be given priority over those who have not filed such requests. If all scheduled and unscheduled speakers present have made their oral statements prior to 9 p.m., the Licensing Board may terminate the session before 9 p.m.

B. Submitting Requests To Make an Oral Limited Appearance Statements

To be considered timely, a written request to make an oral statement must be mailed, faxed, or sent by e-mail so as to be received by close of business (4:30

p.m. EST) on *Monday, June 7, 2004.* Written requests should be submitted to:

Mail: Office of the Secretary, Rulemakings and Adjudications Staff, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Fax: (301) 415–1101 (verification (301) 415–1966).

E-mail: hearingdocket@nrc.gov.

In addition, using the same method of service, a copy of the written request to make an oral statement should be sent to the Chair of this Licensing Board as follows:

Mail: Administrative Judge Ann Marshall Young, Atomic Safety and Licensing Board Panel, Mail Stop T–3F23, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Fax: 301/415–5599 (verification 301/415–7550).

E-mail: AMY@nrc.gov.

C. Submitting Written Limited Appearance Statements

A written limited appearance statement may be submitted at any time. Such statements should be sent to the Office of the Secretary using any of the methods prescribed above, with a copy to the Licensing Board Chair by the same method.

D. Timing and Location of Evidentiary Hearing

The evidentiary hearing will commence at *1 p.m. on Wednesday, July 14, 2004, in the NRC offices at Two White Flint North, 11545 Rockville Pike, in Rockville, Maryland.* The hearing of the above-described evidence will continue at 9 a.m. on July 15, and may go into the evenings of July 14 and/or 15, as necessary. At the conclusion of each day, the Board will announce when the hearing will reconvene. The Board may make changes in the schedule, lengthening or shortening each day's session or canceling a session as deemed necessary or appropriate to allow for witnesses' availability and other matters arising during the course of the proceeding.

Members of the public are encouraged to attend any and all sessions of this evidentiary hearing, but should note that these sessions are adjudicatory proceedings open to the public for observation only. Those who wish to participate are invited to offer limited appearance statements on June 15 or in written statements, as provided above. Those who wish to attend the July 14–15, 2004, hearing should come to the front entrance of the Two White Flint North building (the second building south of the entrance to the White Flint Metro station) and indicate to the security guard on duty that they wish to attend the "Catawba hearing"; arrangements will then be made to direct persons attending to the hearing room.

E. Availability of Documentary Information Regarding the Proceeding

Documents relating to this proceeding are available for public inspection at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland; or electronically through the publicly available records component of the NRC Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible through the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html.* The PDR and many public libraries have terminals for public access to the Internet. Persons who do not have access to ADAMS or who encounter problems in obtaining access to the documents located in ADAMS may contact the NRC PDR reference staff by telephone at 1–800/397–4209 or 301/415–4737, or by e-mail to *pdr@nrc.gov.*

Rockville, Maryland, May 28, 2004.

For the Atomic Safety and Licensing Board.

Ann Marshall Young,

Chair, Administrative Judge.

[FR Doc. 04–12749 Filed 6–4–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–382]

Entergy Operations Inc.; Waterford Steam Electric Station, Unit 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of exemptions from Title 10 of the Code of Federal Regulations (10 CFR) Part 50, Section 50.46 and Appendix K, for Facility Operating License No. NPF–38, issued to Entergy Operations Inc. (the licensee), for operation of the Waterford Steam Electric Station, Unit 3 (Waterford 3), located in St. Charles Parish, Louisiana. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt Waterford 3 from the requirements of 10 CFR Part 50, Section 50.46 and Appendix K, to allow the use of up to four Lead Test Assemblies (LTAs) fabricated with Optimized ZIRLO™, a cladding material that contains a nominally lower tin content than previously approved cladding materials.

The proposed action is in accordance with the licensee's application dated April 30, 2004.

The Need for the Proposed Action

As the nuclear industry pursues longer operating cycles with increased fuel discharge burnup and more aggressive fuel management, the corrosion performance requirements for the nuclear fuel cladding become more demanding. Available industry data from the American Nuclear Society, the International Atomic Energy Agency, the Electric Power Research Institute, and Westinghouse Electric Corporation (Westinghouse) indicate that corrosion resistance improves for cladding with a lower tin content. The optimum tin level provides a reduced corrosion rate while maintaining the benefits of mechanical strengthening and resistance to accelerated corrosion from abnormal chemistry conditions. In addition, fuel rod internal pressures (resulting from the increased fuel duty, use of integral fuel burnable absorbers and corrosion/temperature feedback effects) have become more limiting with respect to fuel rod design criteria. Reducing the associated corrosion buildup, and thus, minimizing temperature feedback effects, provides additional margin to fuel rod internal pressure design criteria.

To meet these needs, Westinghouse developed a LTA program in cooperation with Entergy Operations Inc., which includes a fuel cladding with a tin content lower than the currently licensed range for ZIRLO™. The NRC's regulations in 10 CFR 50.46 and Appendix K, make no provision for use of fuel rods clad in a material other than Zircalloy or ZIRLO™. The licensee has requested the use of up to four LTAs with a tin composition that is less than that specified in the licensing basis for ZIRLO™, as defined in Westinghouse design specifications. Therefore, use of the LTAs calls for exemptions from 10 CFR 50.46 and Appendix K.

Environmental Impacts of the Proposed Action

The NRC staff has completed its evaluation of the proposed action and concludes that the proposed exemptions would not increase the probability or consequences of accidents previously analyzed and would not affect facility radiation levels or facility radiological effluents.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC staff concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for Waterford 3, dated September 1981.

Agencies and Persons Consulted

On May 11, 2004, the staff consulted with the Louisiana State official, Mr. Prosanta Chowdhury, of the Louisiana Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated April 30, 2004 (ADAMS Accession Number ML041250184). Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 25th day of May, 2004.

For the Nuclear Regulatory Commission.

Robert A Gramm,

Chief, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–12746 Filed 6–4–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–327 and 50–328]

Tennessee Valley Authority, Sequoyah Nuclear Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR) Part 50, Section 68, "Criticality Accident Requirements," Subsection (b)(1) for Facility Operating License Nos. DPR–77 and DPR–79, issued to Tennessee Valley Authority (the licensee), for operation of the Sequoyah Nuclear Plant (SQN), located in Hamilton County, Tennessee. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee from the requirements of 10 CFR 50.68, "Criticality Accident Requirements," Subsection (b)(1) during the handling and storage of spent nuclear fuel in a 10 CFR Part 72 licensed spent fuel storage container that is in the SQN spent fuel pool.

The proposed action is in accordance with the licensee's application dated February 20, 2004, as supplemented on May 3, 2004. The supplemental letter provided clarifying information that did not expand the scope of the original request.

The Need for the Proposed Action

Under 10 CFR 50.68(b)(1), the Commission sets forth the following requirement that must be met, in lieu of a monitoring system capable of detecting criticality events.

Plant procedures shall prohibit the handling and storage at any one time of more fuel assemblies than have been determined to be safely subcritical under the most adverse moderation conditions feasible by unborated water.

The licensee is on a time-critical path to load spent nuclear fuel into a 10 CFR Part 72 licensed spent fuel storage container in June 2004. Section 50.12(a) allows licensees to apply for an exemption from the requirements of 10 CFR Part 50 if the regulation is not necessary to achieve the underlying purpose of the rule and other conditions are met. The licensee has stated that compliance with 10 CFR 50.68(b)(1) is not necessary for handling the 10 CFR Part 72 licensed contents of the cask system to achieve the underlying purpose of the rule.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the exemption described above would continue to satisfy the underlying purpose of 10 CFR 50.68(b)(1). The details of the staff's safety evaluation will be provided with the letter to the licensee approving the exemption to the regulation.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released off site. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for the Sequoyah Nuclear Plant, Units 1 and 2 dated February 13, 1974.

Agencies and Persons Consulted

On April 28, 2004, the staff consulted with the Tennessee State official, Elizebeth Flannagin of the Tennessee Bureau of Radiological Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated February 20, 2004, as supplemented on May 3, 2004. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 28th day of May, 2004.

For the Nuclear Regulatory Commission.

William F. Burton,

Acting Chief, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–12748 Filed 6–4–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Peer Review Committee for Source Term Modeling; Notice of Meeting

The Peer Review Committee for Source Term Modeling will hold a closed meeting on June 16–18, 2004 at Sandia National Laboratories (SNL), Albuquerque, NM.

The entire meeting will be closed to public attendance to protect information classified as national security information pursuant to 5 U.S.C. 552b(c)(1).

The agenda for the subject meeting shall be as follows:

Wednesday, June 16 through Friday, June 18—8:30 a.m. until the conclusion of business.

The Committee will review Sandia National Laboratories (SNL) activities associated with the development of guidance documents for estimating source terms resulting from sabotage attacks on radioactive material source transportation packages other than spent nuclear fuel and develop a letter report on the radiological assessments for the NRC.

For further information regarding the time of the meeting and possible changes to the starting and ending times and the duration of the meeting, contact: Dr. Andrew L. Bates, (telephone 301–415–1963) or Dr. Charles G. Interrante (telephone 301–415–3967) between 7:30 a.m. and 4:15 p.m. (ET)

Dated: June 1, 2004.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 04–12750 Filed 6–4–04; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

Summary: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Appeal under the Railroad Retirement and Railroad Unemployment Insurance Act.

(2) *Form(s) submitted:* HA–1.

(3) *OMB Number:* 3220–0007.

(4) *Expiration date of current OMB clearance:* 08/31/2004.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 860.

(8) *Total annual responses:* 860.

(9) *Total annual reporting hours:* 285.

(10) *Collection description:* Under section 7(b)(3) of the Railroad Retirement Act and section 5(c) of the Railroad Unemployment Insurance Act, a person aggrieved by a decision on his or her application for an annuity or other benefit has the right to appeal to the RRB. The collection provides the means for the appeal action.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer (312–751–3363) or *Charles.Mierzwa@rrb.gov*.

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 or *Ronald.Hodapp@rrb.gov* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 04–12738 Filed 6–4–04; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49787; File No. PCAOB–2003–08]

Public Company Accounting Oversight Board; Order Approving Proposed Rules Relating to Inspections of Registered Public Accounting Firms

June 1, 2004.

I. Introduction

On October 15, 2003, the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") filed with the Securities and Exchange Commission (the "Commission") proposed rules pursuant to Section 107 of the Sarbanes-Oxley Act of 2002 (the

"Act") and Section 19(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), relating to inspections of registered public accounting firms. Notice of the proposed rules was published in the **Federal Register** on April 23, 2004.[1] The Commission received three comment letters relating to these rules. For the reasons discussed below, the Commission is granting approval of the proposed rules.

II. Description

Section 104 of the Act directs the PCAOB to conduct a continuing program of inspections to assess the degree of compliance of each registered public accounting firm and associated persons of that firm with the Act, the rules of the Board, the rules of the Commission or professional standards in connection with the firm's performance of audits, issuance of audit reports and related matters involving "issuers," as defined in the Act. In furtherance of this provision, the PCAOB adopted proposed rules to establish procedures for inspections, and submitted them to the Commission for approval. Pursuant to the requirements of section 107(b) of the Act and section 19(b) of the Exchange Act, the Commission approved publication of the proposed rules for public comment on April 16, 2004. The proposed rules on inspections consist of PCAOB Rules 4000 through 4010 (reserving Rule 4005) and certain definitions that appear in PCAOB Rule 1001.

The proposed rules set forth the schedule for regular inspections of registered public accounting firms. Registered firms that issue audit reports to 100 or fewer issuers will be inspected at least once every three years, and all other registered firms will be inspected annually. The PCAOB also may conduct special inspections of registered firms at any time. The rules describe the procedures the Board will follow when the inspection staff detects possible violations by firms under inspection. Under certain circumstances, the Board will report possible violations to the Commission and/or appropriate state regulatory agencies. In addition, the Board may decide to initiate an investigation of suspected violations.

Each inspected firm will have an opportunity to review and comment on the draft inspection report relating to that firm before the Board issues its final inspection report. Copies of the report will be transmitted to the Commission and to the appropriate state regulatory authorities. Although not stated specifically in the inspection rules, it is our understanding and expectation that, as required by section 104(g) of the Act, the Board also will make the findings of each inspection report available to the public. The Act provides that the portion of the report dealing with potential criticisms of or defects in the inspected firm's quality control systems will not be made public unless the firm has failed to address those criticisms or defects to the Board's satisfaction within 12 months after the date of the report. From time to time, as the Board deems appropriate, it also may publish public summaries, compilations or other general reports concerning the procedures, findings, and results of its various inspections.

The Act provides that a registered public accounting firm may seek interim review by the Commission, pursuant to such rules as the Commission shall promulgate, if the firm (1) has reviewed the PCAOB's draft inspection report and responded to the substance of particular items in that report, and disagrees with the assessments contained in any final report prepared by the Board following that response, or (2) disagrees with the Board's determination that quality control criticisms or defects identified in the inspection report have not been addressed to the Board's satisfaction within 12 months of the date of the inspection report.

III. Discussion

The three comment letters submitted with respect to the proposed inspection rules raised a number of issues relating to implementation of the rules and requested greater specificity in certain areas. Some of the concerns the commenters noted relate to the PCAOB's exercise of its discretion in the conduct of inspections and in referring potential violations to the Commission and state regulatory authorities. Their concerns also related to the confidentiality of inspection information, particularly in the hands of the Commission and state regulatory authorities. The PCAOB considered the issues these commenters raised and declined to accept their suggestions, and the resulting rules appear to establish a reasonable operating framework for inspecting registered public accounting firms. In implementing these rules, we would encourage the appropriate and necessary sharing of information among the Board and Federal and State agencies.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rules are consistent with the requirements of the Act and the securities laws and are necessary and appropriate in the public interest and for the protection of investors.

It is therefore ordered, pursuant to section 107 of the Act and section 19(b)(2) of the Exchange Act, that the proposed rules governing inspections of registered public accounting firms (File No. PCAOB–2003–08) be and hereby are approved.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–12740 Filed 6–4–04; 8:45 am]

BILLING CODE 8010–01–P

[1] Release No. 34–49579 (April 19, 2004), 69 FR 22103 (April 23, 2004).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49771; File No. SR–BSE–2003–09]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Boston Stock Exchange, Inc. Relating to the Extension of Certain Listed Trading Rules to the Trading of Nasdaq Securities

May 25, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 2, 2003, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On April 5, 2004, the Exchange amended the proposed rule change.[3] On May 6, 2004, the Exchange amended the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from John Boese, Vice President, Legal and Compliance, Exchange, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated April 2, 2004 ("Amendment No. 1"). In Amendment No. 1, the Exchange restated the proposed rule change in its entirety.

[4] *See* letter from John Boese, Chief Regulatory Officer, Exchange, to Nancy Sanow, Assistant Director, Division, Commission, dated May 5, 2004 ("Amendment No. 2"). In Amendment No. 2, the Exchange restated the proposed rule change in its entirety.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to extend certain of its listed trading rules to the trading of Nasdaq securities. The text of the proposed rule change, as amended, is set forth below. Proposed new language is in italics.

* * * * *

Chapter XXXV Trading in Nasdaq Securities

Competing Specialist Initiative

Section 30. Any specialist can apply to the Exchange to function as a competing specialist pursuant to these procedures:

1. Applications to compete must be directed to the Market Performance Committee in writing and must list in order of preference the stock(s) in which the applicant intends to compete. The Market Performance Committee will use the following guidelines in reviewing an application:

- *Overall performance evaluation results of the applicant*
- *Financial capability*
- *Adequacy of manpower on the floor*
- *Objection by the regular specialist in a stock, with or without cause*

2. Objections to Competition

a. Any objection[1] by the regular specialist to permit competition in one or more of such specialist's stocks must be in writing on a form designated by the Exchange and filed with the Exchange within 24 hours[2] of notice[3] of the competing specialist's application.

b. A Market Performance Committee meeting will be scheduled to review the reasons for objection, and to determine whether an entering competitor could jeopardize the fair and orderly market maintained by the regular specialist in relation to the stock at issue. The regular specialist will be permitted to appear before the Committee to give the Committee the opportunity to question the regular specialist in regard to the reasons for objection. The applicant (competitor) will also be permitted to appear before the Committee to respond to any issues raised. After the Market Performance Committee renders its decision, either party may appeal to the Executive Committee and then, if necessary, to the Board of Governors.[4]

c. Pending Market Performance Committee review of any objection, competition in the security may be permitted upon the affirmative determination of a majority of the floor members of the Market Performance Committee, based on the standard set forth in Paragraph b. of this Section 30. Pending the outcome of any appeal process, competition in the security at issue will be permitted. The results of such competition may be used by either the regular specialist in support of their objection, or considered by the Market Performance Committee, Executive Committee, or Board of Governors, in their respective determinations.

3. All applicants must be registered with the Exchange as specialists and must meet the current minimum requirements for specialists set forth in Chapter XV, the minimum capital and equity requirements as set forth in Chapters VIII and XXII of the Rules of the Exchange, and conform to all other performance requirements and standards set forth in the Rules of the Exchange. A competing specialist will be subject to all of the rules and policies applicable to a regular specialist.

4. All applicant organizations, existing or newly created, must satisfy the Market Performance Committee that they have sufficient manpower to enable them to fulfill the functions of a specialist as set forth in Chapter XV in all of the stocks in which the applicant will be registered either as a regular or a competing specialist.

5. The regular specialist will receive all order flow not specifically directed to a competitor.

6. The specialist/competing specialist is responsible for all orders directed to him/her.

7. In any competitive situation, if either the regular specialist to whom a stock was originally assigned or the specialist organization which subsequently received approval to compete with the regular specialist desires to terminate the competition by requesting that it be relieved of the stock that is the subject of the competition, it should so notify the Market Performance Committee at least three business days prior to the desired effective date of such withdrawal. When the regular specialist requests to be relieved of a stock, the stock shall be posted for reallocation by the Stock Allocation Committee. In the interim, if the Market Performance Committee is satisfied that the competing specialist can continue to maintain a fair and orderly market in such stock, the competing specialist shall serve as the regular specialist until the stock has been reallocated.[5] Where there is more than one competing specialist in the stock, Exchange staff shall place the stock with a caretaker until reallocation.

8. Any competing specialist who withdraws his/her registration in a stock will be barred from applying to compete in that same stock for a period of ninety (90) days following the effective date of withdrawal.

9. Notwithstanding the existence of competing specialist situations, there is only one Exchange market in a security subject to competition. Due to the ease of communications on the Floor via the Stentofon System, it will not be necessary to locate competing specialists adjacent to each other. However, all specialists must be responsible for their portion of the published bid and/or offer, and the Exchange's Nasdaq trading system will update quotations accordingly. Also, competitors must cooperate with the regular specialist regarding openings and reopenings to ensure that they are unitary.

10. Because there is only one Exchange market in a security subject to competition, all limit orders sent to the Exchange will be maintained by the Exchange's Nasdaq trading system's central limit book and will be executed strictly according to time priority as to receipt of the order in the system, irrespective of firm order routing procedures. This rule shall not be applicable where the quotation on the book is for the account of a specialist/competing specialist and another specialist/competing specialist has received an order directed to him. In such event, the specialist/competing specialist can elect to execute the order for his own account at the same price as the other specialist/competing specialist's order, or a better price, or to permit the order to be executed against the specialist/competing specialist's quotation.

11. Competing specialists must keep each other informed and communicate to inquiring Floor brokers the full size of any executable "all or none" orders in their possession since all-or-none orders cannot be represented in the published quote. The competing specialists are expected to represent such orders on a "best efforts" basis to ensure the execution of the entire order at a single price or prices, or not at all.

12. The registration of any competing specialist may be suspended or terminated by the Market Performance Committee upon a determination of any substantial or continued failure by such competing specialist to engage in dealings in accordance with the Constitution and Rules of the Exchange.

[1] Only the regular specialist can object to competition in his/her stocks.

[2] Unless the regular specialist is unavailable, in which case within 24 hours of becoming available.

[3] Once an application is received by the Exchange, notification will be issued to the regular specialist(s) in whose stocks competition is being sought.

[4] All appeals must be submitted within ten (10) business days of the final decision of either the Market Performance Committee or the Executive Committee.

[5] Once the stock has been reallocated to a regular specialist, that specialist shall not be permitted to object to competition in such stock.

Remote Trading in Nasdaq Securities

Section 31. Nasdaq trading terminals and related equipment will be provided by the Exchange to remote member firm locations for specialist trading. The remote terminals will be linked to the Exchange's Nasdaq trading system and will provide the same functionality as is available to on-floor specialists. The following shall apply to specialists participating in Nasdaq Remote trading:

(a) All rules and policies of the Board of Governors of the Exchange shall apply except as specifically excluded or amended under this section.

(b) Any eligible firm may apply to the Market Performance Committee to participate in remote trading. All applicants must meet the current minimum requirements for Nasdaq specialists set forth in Chapters XV (Specialists) and XXXV (Trading in Nasdaq Securities) including, but not limited to their background, experience, staffing, training procedures, adequacy of applicant's proposed confidentiality policy, adequacy of applicant's contingency plans for communication or technology failures, adequacy of applicant's offsite facilities, performance standards and the minimum margin, capital and equity requirements as set forth in Chapters VIII and XXII of the Rules of the Exchange, and conform to all other performance requirements and standards set forth in the Rules of the Exchange.

(c) Unless the Market Performance Committee specifically authorizes otherwise, participating member firms shall be prohibited from trading remotely any Nasdaq securities which are currently being traded on-floor by that individual member firm. In evaluating a member firm's petition for changing the location of where a particular security is traded, the Market Performance Committee shall consider the application in light of the requirements set forth in paragraph (b) above. Individual securities, however, may not be traded by one specialist firm in more than one location under any circumstances.

(d) All rule references pertaining to the trading floor of the Exchange, including:

Chapter I–B, Section 2 ("Dealings on Floor—Hours");
Chapter I–B, Section 3 ("Dealings on Floor—Persons");
Chapter II, Section 2 ("Recording of Sales");
Chapter II, Section 6 ("Bids and Offers for Stocks");
Chapter II, Section 9 ("Trading for Joint Account");
Chapter II, Section 10 ("Discretionary Transactions");
Chapter II, Section 13 ("Trading Against Privileges");
Chapter II, Section 15 ("Record of Orders from Offices to Floor");
Chapter II, Section 23 ("Dealing on Other Exchanges, or Publicly Outside the Exchange");
Chapter II, Section 31 ("Offering Publicly on the Floor");
Chapter VIII, Section 2 ("Member Organization Account");
Chapter XV, Section 1 ("Registration");
Chapter XV, Section 2 ("Responsibilities");
Chapter XV, Section 3 ("Code of Acceptable Business Practices for Specialists");
Chapter XV, Section 5 ("Preference on Competitive Basis");
Chapter XV, Section 6 ("The Specialist's Book");
Chapter XV, Section 9 ("Opening Listed Stock");
Chapter XV, Section 10 ("Hours");
Chapter XV, Section 16 ("Status of Orders When Primary Market Closed");
Chapter XV, Section 18 ("Procedures for Competing Specialists");
Chapter XV ("Special Offerings");
Chapter XVIII, Section 1 ("Penalties");
Chapter XVIII, Section 4 ("Imposition of Fines for Minor Violation(s) of Rules and Floor Decorum Policies");
Chapter XX, Section 6 ("Gratuities");
Chapter XXII, Section 2 ("Capital and Equity Requirements");
Chapter XXXI, Section 2 ("Intermarket Trading System");
Chapter XXXI, Section 3 ("Pre-Opening Application");
Chapter XXXIV ("Minor Rule Violations"); and
Chapter XXXV ("Trading in Nasdaq Securities")

shall be deemed to include any trading done remotely through the Exchange's Nasdaq trading system, and all such trades shall be deemed to be Boston executions on the Exchange.

(e) A written confidentiality policy regarding the location and access to information, terminals and equipment must be adopted by the firm and filed with and approved by the Exchange prior to the commencement of remote trading. Moreover, this policy must conform to all of the requirements set forth in the Rules of the Exchange, including, but not limited to Chapter XV, Section 6 (The Specialist Book), Chapter II, Section 36 (Specialist Member Organizations Affiliated with an Approved Person), and Section 37 (ITSFEA Procedures). In accordance therewith, reasonable principles must be applied to limit access by non-specialists to Remote Specialist facilities and information, and to limit Remote Specialists access to and from other proprietary trading venues, including access from outcry or visible communication, intentional or otherwise.

(f) Floor policies regarding dress code, and smoking shall not apply. Access to the area designated as that of the Remote Specialist's shall be restricted to the specialist, backup specialist, clerks and designated management of the specialist (operation), and Exchange authorized personnel, consistent with the Rules of the Exchange, including, but not limited to, "Chinese Wall" procedures set forth in Chapter II, Section 36 (Specialist Member Organizations Affiliated with an Approved Person), and procedures set forth in Chapter XV, Section 6 (The Specialist's Book).

(g) All Exchange correspondence, memoranda, bulletins and other publications shall be sent to the Exchange's Nasdaq Remote Specialists via electronic means and via U.S. mail or overnight delivery.

(h) All Exchange Nasdaq Remote Specialists will have stentofon (or a similarly operational speakerphone), as well as dedicated telephone access, to the physical trading floor. Any regulatory requirements including trading halts, trading practices, policies, procedures or rules requiring floor official involvement will be coordinated by Exchange personnel with the remote specialist through the dedicated telephone line.

(i) Servicing of the Exchange's Nasdaq trading system terminals and related equipment shall be by Exchange authorized and trained personnel only.

(j) The Exchange's examination program of non-DEA floor members would include the remote specialist operations. Every firm must submit specific supervisory procedures relating to the Remote Specialist operations and appropriate identification of all individuals who will have access to the Remote Specialist operation, including all supervisory personnel.

(k) Any arbitration or disciplinary action arising out of trading activity pursuant to this section would be held

at the physical offices of the Exchange located in Boston.

(l) Each remote Nasdaq terminal assigned and registered by the Exchange will require an ETP, and will be subject to the following:

(1) Each Specialist unit must have at least one registered Exchange seat assigned to the approved specialist.

(a) A specialist may be authorized to obtain additional ETP's for qualified registered clerks to access the BSE's Nasdaq Trading System in support of the Specialist unit.

(b) All specialists and registered clerk ETP holders must be approved by the Market Performance Committee and must meet the following:

(i) file an ETP application form with the BSE Surveillance Department;

*(ii) completion of the required floor training program; **

(iii) successful completion of the BSE floor examination within 90 days of application;

(iv) successful completion of the Series 63 (NASAA Uniform State Law Exam), and registration with the Commonwealth of Massachusetts, and;

(v) submission of fingerprint records to the BSE.

(2) Each Specialist unit identified by the member firm will be assigned an account ("give up") and will be evaluated under the Exchange's Specialist Performance Evaluation Program ("SPEP") which currently measures performance in several separate categories comprising a relative overall performance ranking.

Commentary: . . .

The Market Performance Committee of the Exchange will consider firm applicants based on a variety of criteria, as identified in Section 31(b), above, including, but not limited to, adequate off-site facilities to ensure compliance with the referenced portions of the Exchange's rules, and adequate capital to manage the risks associated with this program. For every applicant specialist who is not an existing on-floor specialist, a two week on-floor training period will be required, among the purposes of which will be to benefit the relationship between the Boston floor and the remote specialist.

** Training: On-site floor training for at least two weeks would be waived for current floor specialists and registered clerks who transfer to remote specialist operations. The two-week on-site floor-training period could also be waived in exceptional circumstances, if other arrangements are made with and approved by the Exchange. In such exceptional circumstances, a waiver will only be permitted if the Exchange is assured that the person requesting the waiver has made other arrangements that ensure that the person meets all of the requirements listed below. However, the two week on-site floor training period will not be waived for easily remedied reasons such as geographical location or inconvenience, and will include, among other things:*

(1) Questioned trade procedures;

(2) Communication procedures with Floor Members, Front Desk Operations, Surveillance, and Systems Support;

(3) Competing Specialist Initiative ("CSI") and Unlisted Trading Privilege ("UTP") applications and procedures;

(4) Stock allocation procedures;

(5) Book or symbol change procedures;

(6) Trading Halt procedures;

(7) Floor official rulings;

(8) Authorizations required for billing, withdrawals, and payment of fines where applicable;

(9) Minor Rule Plan Violations policies and application;

(10) Books and records/reports available;

(11) Explanation of the SPEP categories and similar measurements and procedures;

(12) Certain other rules and policies deemed appropriate by the Exchange (e.g. Limit Order Display Rule, auto-executions, Price Improvement, etc.).

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add two new sections to Chapter XXXV of its Rules related to the trading of Nasdaq securities on the Exchange. Both new sections are already existing sections of the BSE rules set forth in other chapters, but are not specifically tailored to the trading of Nasdaq securities on the Exchange. For clarity, the Exchange is seeking to reprint these already existing sections of their rules in Chapter XXXV, with minor revisions so that they are specifically adapted to the trading of Nasdaq securities on the Exchange.

The first section proposed to be added is a reprint of Chapter XV, Dealer Specialists, Section 18, Procedures for Competing Specialists, with minor revisions. This would permit specialists who trade Nasdaq securities on the BSE to avail themselves of the Exchange's competing specialist program. The only changes to the current rule would be to replace references to "BEACON," which is the BSE's trading system for listed securities, with references to the "BSE's Nasdaq Trading System." Otherwise, all provisions of the Competing Specialist Initiative, would apply to the trading of Nasdaq securities in the same way as they do to the trading of listed securities.

The second proposed addition to the Exchange's Nasdaq Trading Rules would be to extend the BSE's BEACON Remote trading program to include Nasdaq trading. As such, the Exchange would republish, in large part, its remote trading rules located in Chapter XXXIII, BEACON, Section 9, BEACON Remote, as a new section in Chapter XXXV, Trading in Nasdaq Securities. The substance of the rule would not change. For instance, all requirements relating to the applicability of other BSE Rules, confidentiality, "Chinese Walls," communications, and Electronic Trading Permits would still apply. The only deletions or amendments would be those necessary to make the rule applicable to the Nasdaq program, and would be administrative and non-substantive in nature.

The Exchange would leave certain provisions of the existing BEACON Remote Rule out of the new section being proposed for the remote trading of Nasdaq securities. For instance, in the introduction to the BEACON Remote Rule, there is a reference to "ITS." The sentence containing that reference would be dropped from the proposed Remote Nasdaq Rules as ITS is not utilized by the Exchange for transactions in Nasdaq securities. Also, Paragraph (e) of the BEACON Remote Rule would be eliminated in the proposed Remote Nasdaq rules because the Exchange does not have a similar limitation for specialists who trade Nasdaq securities. Likewise, since Paragraph (f) of the BEACON Remote Rule refers to BEACON drop copy, it would not be applicable to the trading of trading Nasdaq securities on the exchange, since Nasdaq securities are not traded on the Exchange's BEACON system, and the concept of "drop copy"

is a BEACON system feature. And, in proposed Paragraph (f), the Exchange would not include the negative references to "identification and visitors" which are included in the counterpart Paragraph (i) of the BEACON Remote Rule. This is because the Exchange has deemed these to be important provisions which should be included in the procedures and policies of a firm that wishes to trade Nasdaq securities remotely on the BSE. Finally, the Exchange is proposing to omit much of the Commentary from the BEACON Remote Rule in its Remote Nasdaq Rule proposal due to the fact that the Commentary was largely devoted to the initial stages of the remote trading program. Since the Exchange has been trading remotely for over four years, it considers the initial stages of the program to have concluded.

As with current BEACON Remote locations, the Exchange's Compliance Department would physically inspect each remote Nasdaq location. A written approval form detailing the physical layout of each location would be required to be executed by and filed with the Exchange prior to the commencement of any trading activity from the remote location. The written approval form would detail the measures taken by the firm to limit access to the remote specialist, with particular attention directed to the steps taken to comply with (i) "Chinese Wall" procedures set forth in Chapter II, Section 36 (Specialist Member Organizations Affiliated with an Approved Person), (ii) Chapter XV, Section 6 (The Specialist Book), and (iii) Chapter II, Section 37 (ITSFEA Procedures). The Exchange also would reserve the right to inspect the premises of all remote specialists, with or without notice, during reasonable business hours, at any point during which the specialist is actively trading on the BSE, in addition to routinely scheduled physical inspections.

In order that the Exchange would be able to individually identify and associate a remote Nasdaq terminal with an individual specialist or clerk, the Exchange is seeking to copy those provisions of the BEACON Remote Rule relating to Electronic Trading Permits ("ETPs"). The ETPs are non-transferable permits that would be primarily used for surveillance purposes. The Exchange would specifically authorize and approve each ETP based on certain qualifications, and the ETP would be required in addition to the Exchange's membership conditions.

The ETP provisions, among other things, require that all registered specialists and clerks complete a floor-training program, unless waived as discussed below, as well as successfully complete the BSE floor examination and the Series 63 (NASAA Uniform State Law Exam). The two-week floor-training program would be waived for current floor specialists and registered clerks who transfer to remote specialist operations. The training period could also be waived for other people in exceptional circumstances, if other arrangements were to be made and approved by the Exchange. In such exceptional circumstances, a waiver would only be permitted if the Exchange was assured that the person requesting the waiver has made other arrangements that ensure that the person would meet all of the training requirements listed in the proposal.[5] However, the two-week on-site training period would not be able to be waived for easily remedied reasons such as geographical location or inconvenience. Furthermore, each registered clerk in a remote location, who qualifies for an ETP, would be required to operate under the direct supervision of a registered specialist, just as a registered clerk is supervised in the on-floor environment.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act[6] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[5] According to the BSE, the on-site floor training includes, among other things: communication procedures with Front Desk Operations, Surveillance, Systems Support; Competing Specialist Initiative and Unlisted Trading Privilege applications and procedures; stock allocation procedures; trading halt procedures; and books and records/reports available.

[6] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, as amended, or

B. institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR-BSE–2003–09 on the subject line.

Paper comments:

Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. All submissions should refer to File Number SR–BSE–2003–09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the

provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the BSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BSE-2003-09 and should be submitted on or before June 28, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04-12783 Filed 6-4-04; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF STATE

[Delegation of Authority No. 274]

Delegation of Responsibilities Under Section 606 of the Foreign Relations Authorization Act, FY 2000 and 2001

By virtue of the authority vested in me as Deputy Secretary of State, including the authority delegated to me by the Secretary of State in Delegation of Authority Number 245 of April 23, 2001, and by section 1 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2651a), as amended, I hereby delegate the following functions in the Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (as enacted in Pub. L. 106-113) ("the Authorization Act"):

Section 1. Functions Delegated to the Assistant Secretary for Diplomatic Security in Consultation with the Director and Chief Operating Officer, Bureau of Overseas Buildings Operations

The functions vested in the Secretary of State by sections 606(a)(2) and 606(a)(3) of the Authorization Act with respect to U.S. diplomatic facilities other than a chancery or consulate building are delegated to the Assistant Secretary for Diplomatic Security, in consultation with the Director and Chief Operating Officer, Bureau of Overseas Buildings Operations.

Section 2. General Provisions

a. Notwithstanding any provisions of this Delegation of Authority, the Secretary of State, the Deputy Secretary of State, and the Under Secretary of State for Management may at any time exercise the functions herein delegated.

b. Any officer to whom functions are delegated by this Delegation of Authority may, to the extent consistent with law: (1) redelegate such functions and authorize their successive redelegation; and (2) promulgate such rules and regulations as may be necessary to carry out such functions.

c. Any reference in this Delegation of Authority to any act, order, determination, delegation of authority, regulation, or procedure shall be deemed to be a reference to such act, order, determination, delegation of authority, regulation, or procedure as amended from time to time, and any reference in this Delegation of Authority to any provision of law shall be deemed to include reference to any hereafter-enacted provision of law that is the same or substantially the same as such provision.

d. This Delegation of Authority supersedes the prior delegation of March 30, 2000 regarding this subject.

e. This Delegation of Authority shall be published in the **Federal Register**.

Dated: May 19, 2004.

Richard L. Armitage,

Deputy Secretary of State, Department of State.

[FR Doc. 04-12808 Filed 6-4-04; 8:45 am]

BILLING CODE 4710-10-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss transport airplane and engine (TAE) issues.

DATES: The meeting is scheduled for Tuesday and Wednesday, June 15-16, 2004, starting at 8:30 a.m. on June 15. Arrange for oral presentations by June 7, 2004.

ADDRESSES: Homewood Suites, Seattle-Tacoma Airport, 6955 Fort Dent Way, Tukwila, WA 98188.

FOR FURTHER INFORMATION CONTACT: Alicia K. Douglas, Office of Rulemaking, ARM-204, FAA, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-9681, fax (202) 267-5075, or e-mail at *alicia.k.douglas@faa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. III), notice is given of an ARAC meeting to be held June 15-16, 2004, at Homewood Suites, Seattle-Tacoma Airport, in Tukwila, Washington.

The agenda will include:

Tuesday, June 15

- Opening Remarks.
- FAA Report.
- European Aviation Safety Agency/ Joint Aviation Authorities Report.
- Transport Canada Report.
- Harmonization Management Team Report.
- Legal Expectations for ARAC Recommendations.
- Human Factors HWG Report and Approval.
- Ice Protection HWG Report.
- Loads and Dynamics HWG Report and Approval.
- Discussion of § 25.1309 Phase 2 Task.

Wednesday, June 16

- General Structures HWG Report and Approval.
- Airworthiness Assurance HWG Report.
- Written or verbal reports, as required, from the following harmonization working groups: Avionics, Engine, Electromagnetic Effects, Flight Test, Seat Test, Flight Control, Flight Guidance, System Design and Analysis, Electrical Systems, Design for Security, Powerplant Installation, and Mechanical Systems.
- Review of Action Items and 2004 Meeting Schedule.

Three working groups will be seeking approval of reports/documents:

1. The Human Factors Working Group on flight deck equipment and systems for use by flight crew;
2. The Loads and Dynamics Working Group on fire protection of flight controls, engine mounts, and other flight structure; and
3. The General Structures Working Group on damage tolerance and fatigue evaluation of structure, and pressurized compartment loads—high altitude flight.

Attendance is open to the public, but will be limited to the availability of meeting room space and telephone lines. Persons participating by telephone, must contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section after June 7 for the call-in number and pass code. Details of the

[7] 17 CFR 200.30-3(a)(12).

meeting also available on the ARAC calendar at *http://www.faa.gov/avr/arm/araccal/htm*. To insure that sufficient telephone lines are available, please notify the person listed in the **FOR FURTHER INFORMATION CONTACT** section of your intent by June 7, 2004. Anyone participating by telephone will be responsible for paying long-distance charges.

The public must make arrangements by June 7, 2004, to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 25 copies to the person listed in the **FOR FURTHER INFORMATION CONTACT** section or by providing copies at the meeting. Copies of the documents to be presented to ARAC for decision or as recommendations to the FAA may be made available by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

If you are in need of assistance or require a reasonable accommodation for the meeting or meeting documents, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC on June 1, 2004.

Tony F. Fazio,

Director, Office of Rulemaking.

[FR Doc. 04–12826 Filed 6–4–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; North South Hurricane Evacuation Corridor, Houma-Thibodaux to LA 3127; Terrebonne, Lafourche, Assumption, St. James, St. John the Baptist, St. Charles, and St. Mary Parishes, LA

AGENCY: Federal Highway Administration, (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise interested agencies and the public that, an Environmental Impact Statement will be prepared for a proposed highway project, a hurricane evacuation route, the Houma-Thibodaux to LA 3127 project servicing Terrebonne, Lafourche, Assumption, St. James, St. John the Baptist, St. Charles, and St. Mary Parishes in Louisiana.

FOR FURTHER INFORMATION CONTACT: William C. Farr, Program Operations Manager, Federal Highway Administration, 5304 Flanders Drive, Suite A, Baton Rouge, Louisiana 70808, Telephone (225) 757–7615; Facsimile: (225) 757–7601 or Michele Deshotels, Environmental Impact Manager 2, Louisiana Department of Transportation and Development, PO Box 94245, Baton Rouge, Louisiana 70804, Telephone: (225) 242–4506; Facsimile: (225) 242–4500. Please refer to project designation numbers State Project No. 700–99–0302 & Federal Aid Project No. HP–9902 (518) in any correspondence.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Louisiana Department of Transportation and Development (LADOTD), will prepare an Environmental Impact Statement (EIS) on a proposal to provide a hurricane evacuation route linking the Houma-Thibodaux area to more direct access to I–10 via LA 3127. Recent planning efforts for this project, known regionally as the Houma-Thibodaux to I–10 Connection (North-South Corridor/Hurricane Evacuation) include the development of a 1999 Louisiana Department of Transportation and Development (LADOTD) study, "Hurricane Evacuation Corridor Study to Connect Relocated US 90 to LA 3127". Also used to establish the project construction limits for this project was a 2002 LADOTD study, "Corridor Feasibility Study Extension of LA 3235 (Larose to US 90). These planning efforts included public involvement. Using these studies, it has been determined that the proposed project limits would be US 90 (Future I–49) on the south and State Route 3127 on the north. The approximate distance of the project is 23 miles.

This project is intended to serve as a primary north-south hurricane evacuation route. It is part of the State's efforts to provide more direct access to the system network servicing the I–10 corridor during emergency evacuation events.

Alternatives under consideration include (1) taking no action; and (2) constructing a four lane highway on new location within the limits described above, on various alignments.

Letters describing this proposal and soliciting comments will be sent to appropriate Federal, State, and local agencies and to private organizations and individuals that have previously expressed, or are known to have, an interest in this proposal. A series of public meetings will be held. In addition, a public hearing will be held. Public notice will be given, in local newspapers and on the LADOTD Web site, of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. A formal scoping meeting will be held upon initiation of this project.

To ensure that the full range of issues related to this proposed action is addressed, and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on May 24, 2004.

William A. Sussmann,

Division Administrator, FHWA, Baton Rouge, Louisiana.

[FR Doc. 04–12739 Filed 6–4–04; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34506]

Great Basin and Northern Railroad—Change in Operators Exemption—The City of Ely and the White Pine Historical Railroad Foundation

Great Basin and Northern Railroad, a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to operate over approximately 28.8 miles of rail line owned by the City of Ely (the City) and the White Pine Historical Railroad Foundation (the Foundation) as follows: (a) Between milepost 127.9 at McGill Junction and milepost 146.1 at Keystone; (b) between milepost 127.9 at McGill Junction and milepost MB 2.6 at McGill; and (c) between milepost 135.3 at Hiline and milepost H–8 at Adverse, in White Pine County, NV.[1]

The transaction was expected to be consummated on or about May 19, 2004, the effective date of the exemption.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of

[1] Previously, rail service had been provided by the BHP Nevada Railroad Company (BHP) over the main line segment between Keystone and McGill Junction, NV, pursuant to a license agreement with the City and the Foundation. BHP discontinued its rail service pursuant to a decision in *BHP Nevada Railroad Company—Discontinuance of Service Exemption—in Elko and White Pine Counties, NV*, STB Docket No. AB–598X (STB served May 24, 2002).

a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34506, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Nicholas J. DiMichael, Esq., Thompson Hine LLP, 1920 N Street, NW., Suite 800, Washington, DC 20036.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

Decided: May 27, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–12687 Filed 6–4–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 04–14]

FEDERAL RESERVE SYSTEM

[Docket No. OP–1198]

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[No. 2004–30]

NATIONAL CREDIT UNION ADMINISTRATION

Interagency Guidance on Overdraft Protection Programs

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS); and National Credit Union Administration (NCUA).

ACTION: Proposed Guidance with request for comment.

SUMMARY: Member agencies of the Federal Financial Institutions Examination Council (FFIEC), the OCC, Board, FDIC, OTS, and NCUA (the Agencies), request comments on this proposed Interagency Guidance on Overdraft Protection Programs (Guidance). This proposed Guidance is intended to assist insured depository institutions in the responsible disclosure and administration of overdraft protection services.

DATES: Comments must be submitted on or before August 6, 2004.

ADDRESSES: Because the Agencies will jointly review all of the comments submitted, interested parties may send comments to any of the Agencies and need not send comments (or copies) to all of the Agencies. Because paper mail in the Washington area and at the Agencies is subject to delay, please consider submitting your comments by e-mail or fax. Commenters are encouraged to use the title "Overdraft Protection Guidance" to facilitate the organization and distribution of comments among the Agencies. Interested parties are invited to submit comments to:

OCC: Your comment must designate "OCC" and include Docket Number 04–14. In general, the OCC will enter all comments received into the docket without change, including any business or personal information that you provide. You may submit your comment by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- OCC Web Site: *http://www.occ.treas.gov.* Click on "Contact the OCC:" Next, scroll down and click on "Comments on Proposed Regulations."
- E-Mail Address: *regs.comments@occ.treas.gov.*
- Fax: (202) 874–4448.
- Mail: Office of the Comptroller of the Currency, 250 E Street, SW., Public Information Room, Mailstop 1–5, Washington, DC 20219.
- Hand Delivery/Courier: 250 E Street, SW., Attn: Public Information Room, Mail Stop 1–5, Washington, DC 20219.
- Docket Information: For access to the docket to read comments received or background documents you may:

View Docket Information in Person: You may personally inspect and photocopy docket information at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. You can make an appointment to inspect the docket by calling us at (202) 874–5043.

View Docket Information Electronically: You may request that we send you an electronic copy of docket information via e-mail or CD–ROM by contacting *regs.comments@occ.treas.gov.*

Request Paper Copy: You may request that we send you a paper copy of docket information by faxing us at (202) 874–4448, by calling us at (202) 874–5043, or mailing the OCC at 250 E Street, SW., Attn: Public Information Room, Mail Stop 1–5, Washington, DC 20219.

Board: You may submit comments, identified by Docket No. OP–1198, by any of the following methods:

- Agency Web Site: *http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- Fax: 202/452–3819 or 202/452–3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed in electronic or paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments by any of the following methods:

- Agency Web site: *http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow the instructions for submitting comments on the Agency Web site.
- E-Mail: *Comments@FDIC.gov.*
- Mail: Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- Hand Delivery/Courier: Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Instructions: All submissions received must include the agency name. All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html* including any personal information provided.

OTS: You may submit comments, identified by No. 2004–30, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail address: *regs.comments@ots.treas.gov.* Please include No. 2004–30 in the subject line

of the message and include your name and telephone number in the message.

• Fax: (202) 906–6518.

• Mail: Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: No. 2004–30.

• Hand Delivery/Courier: Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: No. 2004–30.

Instructions: All submissions received must include the agency name and No. 2004–30 for this proposed Guidance. All comments received will be posted without change to the OTS Internet Site at *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1*. In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

NCUA: You may submit comments by any of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

• NCUA Web site: *http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html*. Follow the instructions for submitting comments.

• E-mail: Address to *regcomments@ncua.gov*. Include "[Your name] Comments on Overdraft Protection" in the e-mail subject line.

• Fax: (703) 518–6319. Use the subject line described above for e-mail.

• Mail: Address to Becky Baker, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

• Hand Delivery/Courier: Same as mail address.

FOR FURTHER INFORMATION CONTACT:

OCC: Margaret Hesse, Special Counsel, Community and Consumer Law Division, (202) 874–5750; Michael Bylsma, Director, Community and Consumer Law Division, (202) 874–5750; or Kim Scherer, National Bank Examiner/Credit Risk Specialist, Credit Risk Policy, (202) 874–5170.

Board: Minh-Duc T. Le, Senior Attorney, Daniel Lonergan, Counsel, or Elizabeth Eurgubian, Attorney, Division of Consumer and Community Affairs, (202) 452–3667; or William H. Tiernay, Supervisory Financial Analyst, Division of Bank Supervision and Regulation, (202) 452–2412. For users of Telecommunications Device for the Deaf ("TDD") only, contact (202) 263–4869.

FDIC: April Breslaw, Chief, Compliance Section (202) 898–6609; Patricia Cashman, Senior Policy Analyst (202) 898–6534; James Leitner, Examination Specialist (202) 898–6790, Division of Supervision and Consumer Protection; and Mark Mellon, Counsel, (202) 898–3884.

OTS: Maurice McClung, Program Manager, Market Conduct, Consumer Protection and Specialized Programs, (202) 906–6182; and Richard Bennett, Counsel, Banking and Finance, (202) 906–7409.

NCUA: Elizabeth A. Habring, Program Officer, Office of Examination and Insurance, (703) 518–6392; or Ross P. Kendall, Staff Attorney, Office of the General Counsel, (703) 518–6562.

SUPPLEMENTARY INFORMATION:

I. Background

Under the auspices of the FFIEC, the Agencies have developed this proposed Guidance to address a service offered by insured depository institutions commonly referred to as "bounced-check protection" or "overdraft protection." This credit service is sometimes offered to transaction account customers as an alternative to traditional ways of covering overdrafts (*e.g.*, overdraft lines of credit or linked accounts).

While both the availability and customer acceptance of these overdraft protection services have increased, aspects of the marketing, disclosure, and implementation of some of these programs have raised concerns with the Agencies. For example, in a 2001 letter, the OCC identified some of these particular concerns.[1] In November 2002, the Board sought comment about the operation of overdraft protection programs.[2] The Board received approximately 350 comments; most were from industry representatives describing how the programs work. This proposed Guidance is the result of information gleaned from public comment letters and other publicly available material, and from information provided by institutions, consumer groups, State representatives, and vendors offering overdraft protection program.

II. Principal Elements of the Guidance

The proposed Guidance first identifies the historical and traditional approaches to providing consumers with protection against account overdrafts, and contrasts these approaches with the more recent overdraft protection services that are marketed to consumers. The Agencies then identify some of the existing and potential concerns surrounding the offering and administration of such overdraft protection services. That section of the proposed Guidance identifies particular issues that previously have been identified by Federal and State bank regulatory agencies, consumers groups, financial institutions, and their trade representatives.

In response to these concerns, the Agencies provide guidance in the three primary sections: Safety and Soundness Considerations, Legal Risks, and Best Practices. In the section on Safety and Soundness Considerations, the Agencies want to ensure that financial institutions offering overdraft protection services adopt adequate policies and procedures to address the credit, operational, and other risks associated with these services. For example, the proposed Guidance emphasizes the need for institutions to incorporate prudent risk management practices related to account eligibility, repayment, and suspension. The proposed Guidance specifically provides that overdraft balances generally should be charged-off within 30 days from the date first overdrawn. Institutions also are advised to monitor carefully their programs on an ongoing basis and adjust them as needed to account for credit risk.

The Legal Risks section of the proposed Guidance generally alerts institutions offering overdraft protection services to the need to comply with all applicable Federal and State laws, and advises institutions to have their overdraft protection programs reviewed by legal counsel to ensure overall compliance prior to implementation. Several Federal consumer compliance laws are outlined in the proposed Guidance.

Finally, the proposed Guidance sets forth best practices that serve as positive

[1] OCC Interpretive Letter 914, September 2001.

[2] 67 FR 72618, December 6, 2002.

examples of practices that are currently observed in, or recommended by, the industry. Broadly, these best practices address the marketing and communications that accompany the offering of overdraft protection services, as well as the disclosure and operation of program features. Clear disclosures and explanations to consumers about the operation, costs, and limitations of overdraft protection services should promote consumer understanding, limit complaints, and encourage appropriate consumer use. Credit and reputational risks to the institution can also be minimized through the incorporation of these best practices.

III. Request for Comment

Comment is requested on all aspects of the proposed Guidance. Interested commenters are also asked to address specifically the proposed Guidance's expectation that institutions will generally charge off overdraft balances following a 30-day timeframe.

The text of the proposed Interagency Guidance on Overdraft Protection Programs follows:

Interagency Guidance on Overdraft Protection Programs

The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), Office of Thrift Supervision (OTS), and National Credit Union Administration (NCUA), collectively "the Agencies," are issuing this interagency guidance concerning a service offered by insured depository institutions that is commonly referred to as "bounced-check protection" or "overdraft protection." This credit service is sometimes offered to transaction account consumers, including small businesses, as an alternative to traditional ways of covering overdrafts. This interagency guidance is intended to assist insured depository institutions in the responsible disclosure and administration of overdraft protection services, particularly those that are marketed to consumers.[3]

Introduction

To protect against account overdrafts, some consumers obtain an overdraft line of credit, which is subject to the disclosure requirements of the Truth in Lending Act (TILA). If a consumer does not have an overdraft line of credit, the institution may accommodate the consumer and pay overdrafts on a discretionary, ad-hoc basis. Regardless of whether the overdraft is paid, institutions typically have imposed a fee when an overdraft occurs, often referred to as a nonsufficient funds or "NSF" fee. Over the years, this accommodation has become automated by some institutions. Historically, institutions have not promoted this accommodation.

More recently, some depository institutions have begun offering "overdraft protection" programs. Unlike the discretionary accommodation traditionally provided to those lacking a line of credit or other type of overdraft service (*e.g.*, linked accounts), these overdraft protection programs are marketed to consumers essentially as short-term credit facilities, and typically provide consumers with an express overdraft "limit" that applies to their accounts.

While the specific details of overdraft protection programs vary from institution to institution, and also vary over time, those currently offered by institutions incorporate some or all of the following characteristics:

- Institutions inform consumers that overdraft protection is a feature of their accounts and promote the use of the service. Institutions also inform consumers of their aggregate dollar limit under the overdraft protection program.
- Coverage is automatic for consumers who meet the institution's criteria (*e.g.*, account has been open a certain number of days, deposits are made regularly). Typically, the institution performs no credit underwriting.
- Overdrafts generally are paid up to the aggregate limit set by the institution for the specific class of accounts, typically $100 to $500.
- Many program disclosures state that payment of an overdraft is discretionary on the part of the institution, and may disclaim any legal obligation of the institution to pay any overdraft.
- The service may extend to check transactions as well as other transactions, such as withdrawals at automated teller machines ("ATMs"), transactions using debit cards, pre-authorized automatic debits from a consumer's account, telephone-initiated funds transfers, and on-line banking transactions.[4]
- A flat fee is charged each time the service is triggered and an overdraft item is paid. Commonly, a fee in the same amount would be charged even if the overdraft item were not paid. A daily fee also may apply for each day the account remains overdrawn.
- Some institutions offer closed-end loans to consumers who do not bring their accounts to a positive balance within a specified time period. These repayment plans allow consumers to repay their overdrafts and fees in installments.

Concerns

Aspects of the marketing, disclosure, and implementation of some overdraft protection programs, intended essentially as short-term credit facilities, are of concern to the Agencies. For example, some institutions have promoted this credit service in a manner that leads consumers to believe that it is a line of credit by informing consumers that their account includes an overdraft protection limit of a specified dollar amount without clearly disclosing the terms and conditions of the service including how fees impact overdraft protection dollar limits, and how the service differs from a line of credit.

In addition, some institutions have adopted marketing practices that appear to encourage consumers to overdraw their accounts, such as by informing consumers that the service may be used to take an advance on their next paycheck, thereby potentially increasing the institutions' credit exposure with little or no analysis of the consumer's creditworthiness. These overdraft protection programs may be promoted in a manner that leads consumers to believe that overdrafts will always be paid when, in reality, the institution reserves the right not to pay some overdrafts. Furthermore, institutions may not clearly disclose that the program allows consumers to overdraw their accounts by means other than check, such as at ATMs and point-of-sale terminals.

Institutions should weigh carefully the credit, legal, reputation, and other risks presented by the programs. Further, institutions should carefully review their programs to ensure they do not lead consumers to believe the service is a traditional line of credit, do not encourage irresponsible consumer

[3] Federal credit unions are already subject to certain regulatory requirements governing the establishment and maintenance of overdraft programs. 12 CFR 701.21(c)(3). This regulation requires a Federal credit union offering an overdraft program to adopt a written policy specifying the dollar amount of overdrafts that the credit union will honor (per member and overall); the time limits for a member to either deposit funds or obtain a loan to cover an overdraft; and the amount of the fee and interest rate, if any, that the credit union will charge for honoring overdrafts. This interagency guidance supplements but does not change these regulatory requirements for Federal credit unions.

[4] Transaction accounts at credit unions are called share draft accounts. For purposes of this interagency guidance, the use of the term "check" includes share drafts.

financial behavior that potentially may increase risk to the institution, and do not mislead consumers about the costs or scope of the overdraft protection offered.

Safety & Soundness Considerations

The overdraft protection programs discussed in this interagency guidance may expose an institution to more credit risk (*e.g.*, higher delinquencies and losses) than overdraft lines of credit and other traditional overdraft programs because of a lack of individual account underwriting. Therefore, institutions providing overdraft protection programs should adopt written policies and procedures adequate to address the credit, operational, and other risks associated with these types of programs. Prudent risk management practices include the establishment of express account eligibility standards and well-defined and properly documented dollar limit decision criteria. Institutions also should monitor these accounts on an ongoing basis and be able to identify individual consumers who may be excessively reliant on the product or who may represent an undue credit risk to the institution. The programs should be administered and adjusted, as needed, to ensure that credit risk remains in line with expectations. This may include, where appropriate, disqualification of a consumer from future participation in the program. Reports detailing product volume, profitability, and credit performance should be provided to management on a regular basis.

Institutions also are expected to incorporate prudent risk management practices related to account repayment and suspension of overdraft protection services. These include the establishment of specific timeframes for when consumers must pay off their overdraft balances. For example, there should be established procedures for the suspension of overdraft services when the account holder no longer meets the eligibility criteria (such as when the account holder has declared bankruptcy or defaulted on another loan) as well as for when there is a lack of repayment of an overdraft. In addition, overdraft balances should generally be charged off within 30 days from the date first overdrawn.[5] The 30-day charge off timeframe applies to all overdrafts created under the overdraft protection programs described in this interagency guidance. Some overdrafts are individually underwritten and supported by a documented assessment of that consumer's ability to repay. In those instances, the charge off timeframes described in the FFIEC Uniform Retail Credit Classification and Account Management Policy would apply.[6] For corporate and small businesses, existing credit relationships may support exceptions to the 30-day charge off guidance.

In some cases, an institution may allow a consumer to cover an overdraft through an extended repayment plan when the consumer is unable to bring an account to a positive balance within the required time frames. Even in such cases, the existence of the repayment plan would not extend the charge-off determination period beyond 30 days measured from the date of the overdraft. Any payments received after the account is charged off (up to the amount charged off against the allowance) should be reported as a recovery.

With respect to the reporting of income and loss recognition on overdraft protection programs, institutions should follow generally accepted accounting principles (GAAP) and the instructions for the Reports of Condition and Income (Call Report), Thrift Financial Report, and NCUA 5300 Call Report. Overdraft balances should be reported as loans. Accordingly, overdraft losses (other than the portion of the loss attributable to uncollected overdraft fees) should be charged off against the allowance for loan and lease losses and uncollected overdraft fees should be reversed against overdraft fee income or an associated earned fee loss allowance.[7] Institutions should adopt rigorous loss estimation processes to ensure that any allowances related to earned fees reflect all estimated losses and that earned but uncollected fees are accounted for accurately. The procedures for estimating an adequate allowance should be documented in accordance with the Policy Statement on the Allowance for Loan and Lease Losses Methodologies and Documentation for Banks and Savings Institutions.[8]

When an institution routinely communicates the available amount of overdraft protection to depositors, these available amounts should be reported as "unused commitments" in regulatory reports. The Agencies also expect proper risk-based capital treatment of outstanding overdrawn balances and unused commitments.[9] Overdraft balances should be risk-weighted according to the obligor. Unused commitments that are unconditionally cancelable at any time pursuant to applicable law and those with an original maturity of one year or less, as defined in the risk-based capital standards, are subject to a zero percent credit conversion factor. Commitments with an original maturity of more than one year are subject to a 50 percent credit conversion factor and the resulting credit equivalent amount should be risk-weighted according to the obligor.

Institutions entering into overdraft protection contracts with third-party vendors must conduct thorough due diligence reviews prior to signing a contract. The interagency guidance contained in the November 2000 Risk Management of Outsourced Technology Services outlines the Agencies' expectations for prudent practices in this area.

Legal Risks

Overdraft protection programs must comply with all applicable Federal laws and regulations, some of which are outlined below. State laws that may be applicable include usury and criminal laws, and laws regarding unfair or deceptive acts or practices. It is important that institutions have their overdraft protection programs reviewed by counsel for compliance with all applicable laws prior to implementation.

Federal Trade Commission Act/ Advertising Rules

Section 5 of the Federal Trade Commission Act (FTC Act) prohibits unfair or deceptive acts or practices.[10] The Federal banking agencies enforce this section pursuant to their authority in section 8 of the Federal Deposit Insurance Act, 12 U.S.C. 1818.[11] An act or practice is unfair if it causes or is likely to cause substantial injury to consumers that is not reasonably

[5] Federal credit unions are required by regulation to establish a time limit, not to exceed 45 calendar days, for a member to either deposit funds or obtain an approved loan from the credit union to cover each overdraft. 12 CFR 701.21(c)(3).

[6] For federally insured credit unions, charge-off policy for booked loans is described in NCUA Letter to Credit Unions No. 03–CU–01, "Loan Charge-off Guidance," dated January 2003.

[7] Institutions may also charge off uncollected overdraft fees against the allowance for loan and lease losses if estimated credit losses on the fees are provided for in that allowance.

[8] Issued by the Board, FDIC, OCC, and OTS. The NCUA provided similar guidance to credit unions in Interpretive Ruling and Policy Statement 02–3, "Allowance for Loan and Lease Losses Methodologies and Documentation for Federally Insured Credit Unions," 67 FR 37445, May 29, 2002.

[9] Federally insured credit unions should calculate risk-based net worth in accordance with the rules contained in 12 CFR part 702.

[10] 15 U.S.C. 45.

[11] *See* OCC Advisory Letter 2002–3 (March 2002); and joint Board and FDIC guidance on Unfair or Deceptive Acts or Practices by State-Chartered Banks (March 11, 2004).

avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. An act or practice is deceptive if, in general, it is a representation, omission, or practice that is likely to mislead a consumer acting reasonably under the circumstances, and it is material.

In addition, the OTS and the NCUA have promulgated similar rules that prohibit savings associations and federally insured credit unions, respectively, from using advertisements or other representations that are inaccurate or misrepresent the services or contracts offered.[12] These regulations are broad enough to prohibit savings associations and federally insured credit unions from making any false representations to the public regarding their deposit accounts.[13]

Overdraft protection programs may raise issues under either the FTC Act or, in connection with savings associations or federally insured credit unions, the OTS's or NCUA's advertising rules, depending upon how the programs are marketed and implemented. To avoid engaging in deceptive, inaccurate, misrepresentative, or unfair practices, institutions should closely review all aspects of their overdraft protection programs, especially any materials that inform consumers about the programs.

Truth in Lending Act

TILA and Regulation Z require creditors to give cost disclosures in connection with extensions of consumer credit.[14] TILA and the regulation apply to creditors that regularly extend consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments.[15]

When overdrafts are paid, credit is extended. However, fees for paying overdraft items currently are not considered finance charges under Regulation Z if the institution has not agreed in writing to pay overdrafts.[16] Since this regulatory exception was created for the occasional *ad-hoc* payment of overdrafts, its application to these automated and marketed overdraft protection programs could be reevaluated in the future. Even where the institution agrees in writing to pay overdrafts as part of the deposit account agreement, fees assessed against a transaction account for overdraft protection services are finance charges only to the extent the fees exceed the charges imposed for paying or returning overdrafts on a similar transaction account that does not have overdraft protection.

Some financial institutions also offer overdraft repayment loans to consumers who are unable to repay their overdrafts and bring their accounts to a positive balance within a specified time period.[17] These closed-end loans will trigger Regulation Z disclosures, for example, if the loan is payable by written agreement in more than four installments. Regulation Z will also be triggered where such closed-end loans are subject to a finance charge.

Equal Credit Opportunity Act

Under the Equal Credit Opportunity Act (ECOA) and Regulation B, creditors are prohibited from discriminating against an applicant on a prohibited basis in any aspect of a credit transaction.[18] This prohibition applies to overdraft protection programs. Thus, steering or targeting certain consumers on a prohibited basis for overdraft protection programs while offering other consumers overdraft lines of credit or other more favorable credit products or overdraft services, will raise concerns under the ECOA.

In addition to the general prohibition against discrimination, the ECOA and Regulation B contain specific rules concerning procedures and notices for credit denials and other adverse action. Regulation B defines the term "adverse action,"[19] and generally requires a creditor who takes adverse action to send a notice to the consumer providing, among other things, the reasons for the adverse action.[20] Some actions taken by creditors under overdraft protection programs might constitute adverse action but would not require notice to the consumer if the credit is deemed to be "incidental credit" as defined in Regulation B. "Incidental credit" includes consumer credit that is not subject to a finance charge, is not payable by agreement in more than four installments, and is not made pursuant to the terms of a credit card account.[21] Overdraft protection programs that are not covered by the TILA would generally qualify as incidental credit under Regulation B.

Truth in Savings Act

Under the Truth in Savings Act (TISA), deposit account disclosures must include the amount of any fee that may be imposed in connection with the account and the conditions under which the fee may be imposed.[22] In addition, institutions must give advance notice to affected consumers of any change in a term that was required to be disclosed if the change may reduce the annual percentage yield or adversely affect the consumer.

When overdraft protection services are added to an existing deposit account, advance notice to the accountholder may be required, for example, if the fee for the service exceeds the fee for accounts that do not have the service.[23] Where the added overdraft protection fees do not exceed previously disclosed NSF fees, a new disclosure may be required if the previous disclosure did not adequately disclose that the fees would be assessed for both paid checks and returned checks. In addition, TISA prohibits institutions from making any advertisement, announcement, or solicitation relating to a deposit account that is inaccurate or misleading or that misrepresents their deposit contracts.

Since these automated and marketed overdraft protection programs did not exist when most of the implementing regulations were issued, the regulations may be reevaluated.

Electronic Fund Transfer Act

The Electronic Fund Transfer Act (EFTA) and Regulation E require an institution to provide consumers with account-opening disclosures and to send a periodic statement for each monthly cycle in which an electronic fund transfer (EFT) has occurred and at least quarterly if no transfer has occurred.[24] If, under an overdraft protection program, a consumer could

[12] 12 CFR 563.27 (OTS) and 12 CFR 740.2 (NCUA).

[13] *See* OTS Op. Chief Counsel (September 3, 1993), 93–CC–21.

[14] 15 U.S.C. 1601 *et seq.* TILA is implemented by Regulation Z, 12 CFR part 226.

[15] Institutions should be aware that whether a written agreement exists is a matter of State law. *See, e.g.*, 12 CFR 226.5.

[16] Traditional lines of credit, which generally are subject to a written agreement, do not fall under this exception.

[17] For Federal credit unions, this time period may not exceed 45 calendar days. 12 CFR 701.21(c)(3).

[18] 15 U.S.C. 1691 *et seq.* The ECOA is implemented by Regulation B, 12 CFR part 202. The ECOA prohibits discrimination on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to contract), the fact that all or part of the applicant's income derives from a public assistance program, and the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act.

[19] *See* 12 CFR 202.2(c).

[20] *See* 12 CFR 202.9.

[21] *See* 12 CFR 202.3(c).

[22] 12 U.S.C. 4301 *et seq.* TISA is implemented by Regulation DD at 12 CFR part 230 for banks and savings associations, and by NCUA's TISA regulation at 12 CFR part 707 for federally insured credit unions.

[23] For example, an advance change in terms notice would not be required if the consumer's account disclosures stated that their overdraft check may or may not be paid and the same fee would apply.

[24] 15 U.S.C. 1693 *et seq.* The EFTA is implemented by Regulation E, 12 CFR part 205.

overdraw an account by means of an ATM withdrawal or point-of-sale debit card transaction, both are electronic fund transfers subject to EFTA and Regulation E. As such, periodic statements must be readily understandable and accurate regarding debits made, current balances, and fees charged. Terminal receipts also must be readily understandable and accurate regarding the amount of the transfer. Moreover, readily understandable and accurate statements and receipts will help reduce the number of alleged errors that the institution must investigate under Regulation E, which can be time-consuming and costly to institutions.

Best Practices

Clear disclosures and explanations to consumers of the operation, costs, and limitations of an overdraft protection program and appropriate management oversight of the program are fundamental to enabling responsible use of overdraft protection. Such disclosures and oversight can also minimize potential consumer confusion and complaints, foster good customer relations, and reduce credit and other potential risks to the institution. Institutions that establish overdraft protection programs should take into consideration the following practices that have been implemented by institutions and that may otherwise be required by applicable law. These best practices currently observed in or recommended by the industry include:

Marketing and Communications With Consumers

- *Avoid promoting poor account management.* Do not market the program in a manner that encourages routine or intentional overdrafts; rather present the program as a customer service that may cover inadvertent consumer overdrafts.
- *Fairly represent overdraft protection programs and alternatives.* When informing consumers about an overdraft protection program, inform consumers generally of other available overdraft services or credit products, explain to consumers the costs and advantages of various alternatives to the overdraft protection program, and identify for consumers the risks and problems in relying on the program and the consequences of abuse.
- *Train staff to explain program features and other choices.* Train customer service or consumer complaint processing staff to explain their overdraft protection program's features, costs, and terms, including how to opt out of the service. Staff also should be able to explain other available overdraft products offered by the institution and how consumers may qualify for them.
- *Clearly explain discretionary nature of program.* If the overdraft payment is discretionary, describe the circumstances in which the institution would refuse to pay an overdraft or otherwise suspend the overdraft protection program. Furthermore, if payment of overdrafts is discretionary, information provided to consumers should not contain any representations that would lead a consumer to expect that the payment of overdrafts is guaranteed or assured.
- *Distinguish overdraft protection services from "free" account features.* Avoid promoting "free" accounts and overdraft protection services in the same advertisement in a manner that suggests the overdraft protection service is free of charges.
- *Clearly disclose program fee amounts.* Marketing materials and information provided to consumers that mention overdraft protection programs should clearly disclose the dollar amount of the overdraft protection fees for each overdraft and any interest rate or other fees that may apply. For example, rather than merely stating that the institution's standard NSF fee will apply, institutions should restate the dollar amount of any applicable fees in the overdraft protection program literature or other communication that discloses the program's availability.
- *Clarify that fees count against overdraft protection program limit.* Consumers should be alerted that the fees charged for covering overdrafts, as well as the amount of the overdraft item, will be subtracted from any overdraft protection limit disclosed, if applicable.
- *Demonstrate when multiple fees will be charged.* Clearly disclose, where applicable, that more than one overdraft protection program fee may be charged against the account per day, depending on the number of checks presented on and other withdrawals made from the consumer's account.
- *Explain check clearing policies.* Clearly disclose to consumers the order in which the institution pays checks or processes other transactions (*e.g.*, transactions at the ATM or point-of-sale terminal).
- *Illustrate the type of transactions covered.* Clearly disclose that overdraft protection fees may be imposed in connection with transactions such as ATM withdrawals, debit card transactions, preauthorized automatic debits, telephone-initiated transfers or other electronic transfers, if applicable. If institutions' overdraft protection programs cover transactions other than check transactions, institutions should avoid language in marketing and other materials provided to consumers implying that check transactions are the only transactions covered.

Program Features and Operation

- *Provide election or opt-out of service.* Obtain affirmative consent of consumers to receive overdraft protection. Alternatively, where overdraft protection is automatically provided, permit consumers to "opt out" of the overdraft program and provide a clear consumer disclosure of this option.
- *Alert consumers before a non-check transaction triggers any fees.* When consumers attempt to use means other than checks to withdraw or transfer funds made available through an overdraft protection program, provide a specific consumer notice, where feasible, that completing the withdrawal will trigger the overdraft protection fees. This notice should be presented in a manner that permits consumers to cancel the attempted withdrawal or transfer after receiving the notice. If this is not possible, then post notices on proprietary ATMs explaining that withdrawals in excess of the actual balance will access the overdraft protection program and trigger fees for consumers who have overdraft protection services. Institutions may make access to the overdraft protection program unavailable through means other than check transactions.
- *Prominently distinguish actual balances from overdraft protection funds availability.* When disclosing an account balance by any means, the disclosure should represent the consumer's own funds available without the overdraft protection funds included. If more than one balance is provided, separately (and prominently) identify the balance without the inclusion of overdraft protection.
- *Promptly notify consumers of overdraft protection program usage each time used.* Promptly notify consumers when overdraft protection has been accessed, for example, by sending a notice to consumers the day the overdraft protection program has been accessed. The notification should identify the transaction, and disclose the overdraft amount, any fees associated with the overdraft, the amount of time consumers have to return their accounts to a positive balance, and the consequences of not returning the account to a positive balance within the given timeframe. Institutions should also consider reiterating the terms of the overdraft protection service when the consumer accesses the service for the first time.

Where feasible, notify consumers in advance if the institution plans to terminate or suspend the consumer's access to the service.

- *Consider daily limits.* Consider limiting the number of overdrafts or the dollar amount of fees that will be charged against any one account each day while continuing to provide coverage for all overdrafts up to the overdraft limit.
- *Monitor overdraft protection program usage.* Monitor excessive consumer usage, which may indicate a need for alternative credit arrangements or other services, and should inform consumers of these available options.
- *Fairly report program usage.* Institutions should not report negative information to consumer reporting agencies when the overdrafts are paid under the terms of overdraft protections programs that have been promoted by the institutions.

This concludes the text of the proposed Interagency Guidance on Overdraft Protection Programs.

Dated: May 26, 2004.

John D. Hawke, Jr.,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, May 27, 2004.

Jennifer J. Johnson,

Secretary of the Board.

Dated in Washington, DC, the 10th day of May, 2004. By order of the Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: May 26, 2004.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

By the National Credit Union Administration Board on May 20, 2004.

Becky Baker,

Secretary of the Board.

[FR Doc. 04–12522 Filed 6–4–04; 8:45 am]

BILLING CODE 4810–33–6210–01–6714–01–6720–01–7535–01–P

Corrections

Federal Register
Vol. 69, No. 109
Monday, June 7, 2004

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board

Correction

In notice document 04–10586 appearing on page 26078 in the issue of Tuesday, May 11, 2004, make the following correction:

In the third column, under the **DATES** heading, in the first line, "June 8, 2004" should read "June 9, 2004".

[FR Doc. C4–10586 Filed 6–3–04; 3:19 pm]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17420; Airspace Docket No. 04–ACE–21]

Modification of Class E Airspace; Moberly, MO

Correction

In rule document 04–9916 beginning on page 24064 in the issue of Monday, May 3, 2004, make the following correction:

§71.1 [Corrected]

On page 24065, in §71.1, in the third column, under the heading "**ACE MO E5 Moberly, MO**" in the second line, "(Lat. 30°27′50″ N.," should read "(Lat. 39°27′50″ N.,".

[FR Doc. C4–9916 Filed 6–4–04; 8:45 am]
BILLING CODE 1505–01–D

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Federal Aviation Administration

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Federal Energy Regulatory Commission

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html.*

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H.R. 408/P.L. 108–229

To provide for expansion of Sleeping Bear Dunes National Lakeshore. (May 28, 2004; 118 Stat. 645)

H.R. 708/P.L. 108–230

To require the conveyance of certain National Forest System lands in Mendocino National Forest, California, to provide for the use of the proceeds from such conveyance for National Forest purposes, and for other purposes. (May 28, 2004; 118 Stat. 646)

H.R. 856/P.L. 108–231

To authorize the Secretary of the Interior to revise a repayment contract with the Tom Green County Water and Control and Improvement District No. 1, San Angelo project, Texas, and for other purposes. (May 28, 2004; 118 Stat. 648)

H.R. 923/P.L. 108–232

Premier Certified Lenders Program Improvement Act of 2004 (May 28, 2004; 118 Stat. 649)

H.R. 1598/P.L. 108–233

Irvine Basin Surface and Groundwater Improvement Act of 2004 (May 28, 2004; 118 Stat. 654)

H.R. 3104/P.L. 108–234

To provide for the establishment of separate campaign medals to be awarded to members of the uniformed services who participate in Operation Enduring Freedom and to members of the uniformed services who participate in Operation Iraqi Freedom. (May 28, 2004; 118 Stat. 655)

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2003, through January 1, 2004. The CFR volume issued as of January 1, 2002 should be retained.

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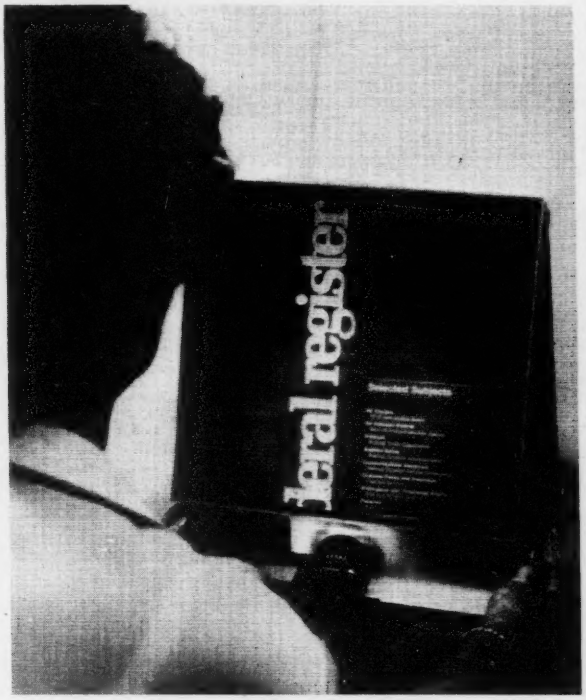

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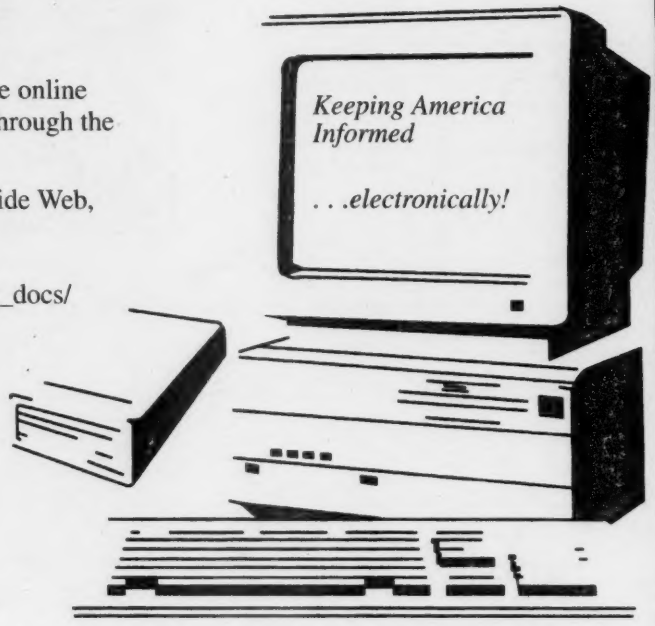

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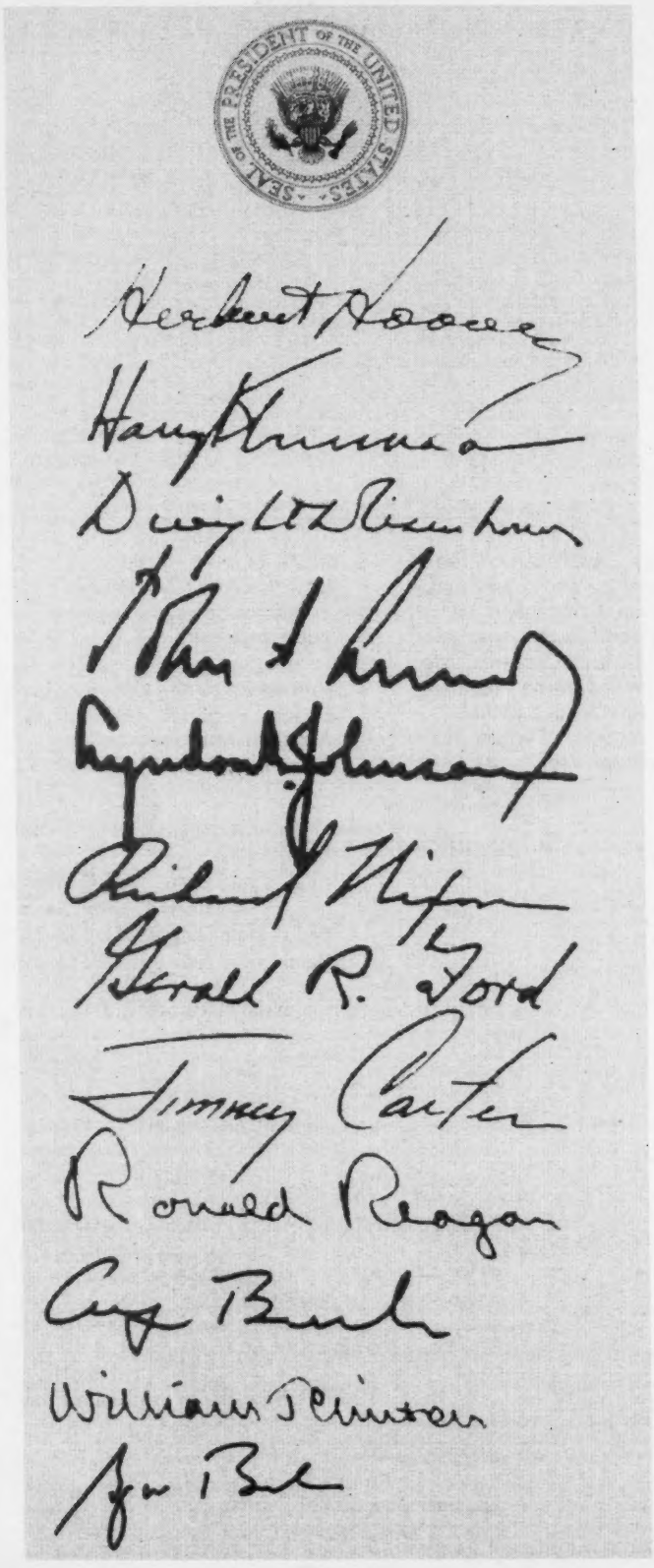

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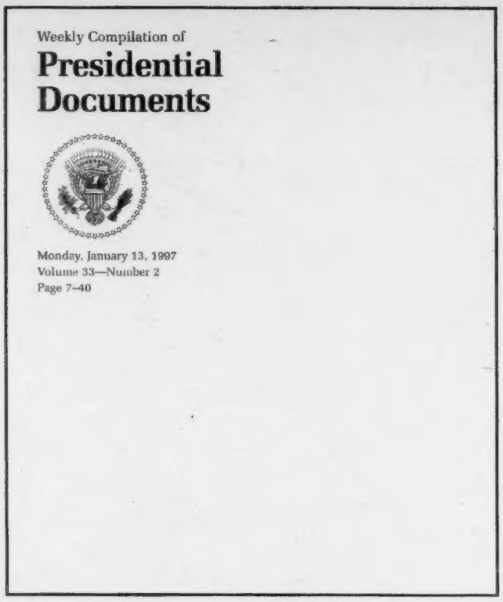

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